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Part 167
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See Cir 541, to

CIRCULAR No. 401.

**ENLARGED HOMESTEAD ACT—ADDITIONAL ENTRY AFTER
PROOF ON THE ORIGINAL—ACT OF MARCH 3, 1915 (PUBLIC
NO. 279).**

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 17, 1915.

REGISTERS AND RECEIVERS,

*United States land offices, Arizona, California, Colorado, Idaho,
Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon,
South Dakota, Utah, Washington, and Wyoming.*

SIRS: The act of Congress approved March 3, 1915 (Public, No. 279), amends sections 3 and 4 of the enlarged homestead acts of February 19, 1909 (35 Stat., 639), and June 17, 1910 (36 Stat., 531), so as to permit an additional entry thereunder to be made, though proof has already been submitted on the original, provided the applicant still owns and occupies the tract first entered, and it defines the residence and cultivation required in connection therewith.

2. The act does not change the law as to additional entries made before submission of proofs on the originals; therefore there is, as to such entries, no alteration in the rules heretofore in force, as explained in the instructions of March 17, 1913 (42 L. D., 345), the substance whereof is embodied in paragraph 47 of the homestead circular of January 2, 1914 (43 L. D., 1). As to entries permitted by the present act, the following instructions are issued:

3. *Who may make entry.*—The act confers the right of entry only upon one who "still owns and occupies the land" first entered; it is not required that the claimant be residing on said tract, and the occupancy thereof may be by agent or through a tenant. A statement showing continued ownership and occupancy must be inserted in Form 4-004, in case of applications under this act. It should be observed that no change has been made in the requirement of law that the tracts be contiguous; and this would not be fulfilled by the fact that they *corner* on each other.

4. *Residence.*—The claimant is allowed credit for residence on the original tract and can not, in any event, be required to show residence continued for a greater period than is prescribed by section 2291 of the Revised Statutes. In other words, if the proof on the original entry has been accepted as sufficient under either the five-year or the three-year act, no further residence is needed; but, if the proof was by way of commutation, claimant must show such further residence, before or after the date of the additional entry, as will make up the aggregate amount required by the provisions of the act of June 6, 1912 (37 Stat., 123).

5. *Cultivation.*—The law regarding cultivation, with reference to additional entries made before submission of proofs on the originals,

has no application to the entries allowed under this act. The claimant is required to show cultivation of the additional tract itself, to the extent and for the period required by the act of June 6, 1912, that is, one-sixteenth of its area during the second year of the entry, and one-eighth during the third and until submission of proof, which must occur within five years after the date of the additional entry.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

[PUBLIC—No. 279.]

An Act To amend an act entitled "An act to provide for an enlarged homestead."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections three and four of the act entitled "An act to provide for an enlarged homestead," approved February nineteenth, nineteen hundred and nine, and of an act entitled "An act to provide for an enlarged homestead," approved June seventeenth, nineteen hundred and ten, as amended by an act approved February eleventh, nineteen hundred and thirteen, be, and the same are hereby, amended to read as follows:

"SEC. 3. That any person who has made, or shall make, homestead entry of lands of the character herein described, and who has not submitted final proof thereon, or who having submitted final proof still owns and occupies the land thus entered, shall have the right to enter public lands, subject to the provisions of this act, contiguous to his first entry, which shall not, together with the original entry, exceed three hundred and twenty acres: *Provided*, That the land originally entered and that covered by the additional entry shall have first been designated as subject to this act, as provided by section one thereof.

"SEC. 4. That at the time of making final proof, as provided in section twenty-two hundred and ninety-one of the Revised Statutes, the entryman under this Act shall, in addition to the proofs and affidavits required under said section, prove by himself and two credible witnesses that at least one-sixteenth of the area embraced in such entry was continuously cultivated for agricultural crops other than native grasses, beginning with the second year of the entry, and that at least one-eighth of the area embraced in the entry was so continuously cultivated beginning with the third year of the entry: *Provided*, That any qualified person who has heretofore made, or who hereafter makes, additional entry under the provisions of section three of this Act to an entry upon which final proof has not been made, may be allowed to perfect title to his original entry by showing compliance with the provisions of section twenty-two hundred and ninety-one of the Revised Statutes, respecting such original entry, and thereafter in making proof upon his additional entry shall be credited with residence maintained upon his original entry

from date of such original entry, but the cultivation required upon entries made under this Act must be shown respecting such additional entry, which cultivation, while it may be made upon either the original or additional entry or upon both entries, must be cultivation in addition to that relied upon and used in making proof upon the original entry; or, if he elects, his original and additional entries may be considered as one, with full credit for residence upon and improvement made upon his original entry, in which event the amount of cultivation herein required shall apply to the total area of the combined entry, and proof may be made upon such combined entry whenever it can be shown that the cultivation required by this section has been performed; and to this end the time within which proof must be made upon such a combined entry is hereby extended to seven years from the date of the original entry: *Provided further*, That where an entry is made as additional to an entry upon which final proof has theretofore been submitted by an entryman who still owns and occupies the land thus entered, the entryman in making proof upon his additional entry shall be credited with residence maintained upon his original entry from date thereof, but the cultivation required upon entries made under this act must be shown respecting such additional entry and must be performed upon the land included therein to the extent and for the period required in connection with the original entries under this act, proof of which must be submitted within five years from and after the date of the additional entry: *Provided further*, That nothing herein contained shall be so construed as to require residence upon the combined entry in excess of the period of residence as required by section twenty-two hundred and ninety-one of the Revised Statutes."

Approved March 3, 1915.

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Part 167

Still under effect
5/29/54 BB

See Circ. 541

CIRCULAR No. 402.

**ENLARGED-HOMESTEAD ACT—PETITIONS FOR DESIGNATION.
ACT OF MARCH 4, 1915 (PUBLIC, NO. 299).**

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 17, 1915.

REGISTERS AND RECEIVERS,

*United States Land Offices, Arizona, California, Colorado, Idaho,
Kansas, Montana, Nevada, New Mexico, North Dakota, Ore-
gon, South Dakota, Utah, Washington, and Wyoming.*

SIRS: Section 1 of the act of Congress approved March 4, 1915 (Public, No. 299), copy of which is appended, confers a preference right of entry under sections 1 to 5, or under section 6, of either of the enlarged-homestead acts, upon a qualified person pursuant to whose petition land is designated as subject thereto. These instructions are explanatory of the act and of the procedure prescribed for its execution.

2. The act applies to cases where the party is seeking to make an original entry and to all cases where he seeks to make additional entry, regardless of the question whether proof has or has not been already submitted on his original filing.

It does not affect the right of any person or persons interested in designation of land to forward to the Director of the United States Geological Survey or to the Secretary of the Interior a petition therefor.

3. (a) Where a preference right under the act is sought there must be filed at the proper local land office the usual application for entry, original or additional, as the case may be, executed by the applicant and two witnesses, and the fee and commissions must be then paid; it must be accompanied by the applicant's affidavit, executed in duplicate and corroborated by at least two witnesses, setting forth the character of the land involved—both tracts, if additional entry is sought.

(b) This affidavit, which will be entitled "Petition for Designation," must give the name and post-office address of the applicant and a description by legal subdivisions of all the land involved; in case of additional applications it should give the serial number (or numbers) of the old claim.

(c) In case of applications for entry under sections 1 to 5, commonly known as the general provisions, of the enlarged homestead act, the affidavit should set forth fully the conditions governing the irrigability of the land. If any part or parts thereof are irrigated, their location, area, source of water supply, and other pertinent facts should be stated. If any part or parts thereof are under constructed or proposed irrigation ditches or canals, or adjacent thereto, the relation of the lands to same and the reasons for applicant's belief that the lands are not irrigable therefrom should be explained. The relation of the tract to surface streams or springs rising on or flowing

across them or in their vicinity should be indicated. If such sources of water supply are inadequate for the irrigation of the applicant's lands, or are not available to him, full particulars should be given.

The location and depth of wells, elevation of water plane relative to the surface, and other pertinent facts which will disclose the quantity and quality of the water supply, obtainable from either ordinary or artesian wells on the land, should be given. If there are no wells thereon such information should be furnished as to any other wells in that vicinity, and the possibility of irrigating the tract involved from underground sources should be fully discussed. If any attempts have been made to irrigate and reclaim the tract, or if it has been included in a desert-land entry, the reasons for lack of success should be stated.

The affidavit should be supplemented by a map or diagram in cases where the facts may be advantageously presented thereby.

(d) In cases of applications for entry under section 6 of the enlarged homestead acts, applicable to Utah and Idaho, the affidavit should give information regarding the possibility of securing on the land a supply of water suitable for domestic use. If there are on the tract, or in its immediate vicinity, springs or streams which would furnish such supply, a complete statement should be made as to the quantity, quality, and availability of the water. A statement should also be made as to the location, depth, elevation of water plane relative to the surface, depth at which water was first obtained, and other pertinent facts as to wells situated either in the vicinity of the tract or nearest thereto and as to the relation of the tract thereto. If unsuccessful attempts have been made to secure a domestic water supply on the land itself, the facts concerning them should be set forth.

If the tract has not theretofore been designated by the Secretary of the Interior under sections 1 to 5 of the act, applicants for designation under section 6 thereof should, in addition to the above, furnish the information required of applicants for designation under said sections 1 to 5, as hereinabove explained.

(e) The filing of an affidavit, as above indicated, will not be conclusive as to the character of the land therein described, and the applicant may be required by the Geological Survey to furnish additional evidence with regard thereto. Moreover, the filing of an application and petition does not give the party the right to fence the land or place other improvements thereon, and the erection of improvements will not confer upon him any right to equitable consideration of the application in the event the land is found not to be of the character contemplated by those provisions of the enlarged homestead act under which the claim is filed.

4. The applications for entry (when regular) will be suspended by you and retained in your office, but you will promptly forward both copies of the affidavit by special letter to this office, which will transmit one to the United States Geological Survey for consideration. Where defects appear in the papers—especially (as to additional entries) failure to refer in the affidavit to the tract originally entered—you will call for supplemental evidence, as in other cases; if this is not furnished, you will forward all the papers to this office for consideration, making proper recommendations in connection therewith.

5. No other appropriation of the land will be allowed before the application has been finally disposed of. However, later applications therefor should be received and suspended. If withdrawal of an application under the act of March 4, 1915, be filed, you will promptly notify this office thereof, inviting special attention to the pendency of the petition for designation, and will close the case on your records. Prior to final action on the application the party's homestead right will be in abeyance, and he will not be entitled to exercise same elsewhere, nor will he be permitted to have two applications under this act pending at the same time.

6. If a request for designation be denied, the application for entry will be rejected by this office, and when the decision becomes final you will be directed to close the case on your records. Where a petition is granted in part, an order appropriate to the case will be made as to the designated lands. If designation be made of all the land involved, you will, when it becomes effective, be directed in the usual manner to place the entry of record.

7. The benefits of the act do not extend to a person who has filed a petition for designation elsewhere than at the local land office of the district where the land is situated, nor to one whose petition was filed at the place indicated, unless accompanied by application for entry of the land. In every case where there is now pending an application for original or additional entry under the enlarged homestead act, not allowable because part or all of the land has not been designated, you will promptly advise the applicant of the passage of the act of March 4, 1915, forwarding a copy of these instructions, and allowing him 30 days after notice within which to furnish the required corroborated affidavit in duplicate; if this be done, you will take action as directed in paragraphs 2 to 5 hereof, reporting as to adverse claim, if any there be.

8. Where you have knowledge that a person has filed a petition for designation of land, but no application for entry thereof, you will advise him of the passage of the act, forwarding him a copy hereof and informing him that he will be obliged to comply with its provisions in order to obtain the preference right provided thereby.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

[PUBLIC—No. 299.]

AN ACT To amend an act entitled "An act to provide for an enlarged homestead," and acts amendatory thereof and supplemental thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where any person qualified to make entry under the provisions of the act of February nineteenth, nineteen hundred and nine, and acts amendatory thereof and supplemental thereto, shall make application to enter under the provisions of said acts any unappropriated public land in any State affected thereby which has not been designated as subject to entry under the act (provided said application is accompanied and supported by properly corroborated affidavit of the applicant in duplicate, showing prima facie that the land applied for is of the character contemplated by said acts), such application, together with the regular fees and commissions, shall be received by the register and receiver of the land district in which said land is located, and suspended until it shall have been determined by the Secretary of the Interior whether said land is actually of that character; that during such suspension the land described in said application shall be segregated by the said register and receiver and not subject to entry until the case is disposed of; and if it shall be determined that such land is of the character contemplated by the said acts, then such application shall be allowed; otherwise it shall be rejected, subject to appeal: *Provided*, That the provisions of this act shall apply to the application of a qualified entryman to make additional entry of unappropriated land adjoining his unperfected homestead entry, the area of which, together with his original entry, shall not exceed three hundred and twenty acres.

SEC. 2. That the provisions of this act and of the first five sections of said act of February nineteenth, nineteen hundred and nine, and acts amendatory thereof, excepting the act of June seventeenth, nineteen hundred and ten, entitled "An act to provide for an enlarged homestead" in the State of Idaho, shall extend to and include the State of South Dakota.

Approved March 4, 1915.

CIRCULAR No. 409.

**INSTRUCTIONS—ACT MARCH 4, 1915 (PUBLIC NO. 331), FOR THE
RELIEF OF ENTRYMEN UNDER RECLAMATION PROJECTS.**

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 29, 1915.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: The act approved March 4, 1915 (Public No. 331), entitled "An act for the relief of homestead entrymen under the reclamation projects of the United States," reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who has made homestead entry under the act of June seventeenth, nineteen hundred and two (Thirty-second Statutes at Large, page three hundred and eighty-eight), for land believed to be susceptible of irrigation which at the time of said entry was withdrawn for any contemplated irrigation project, may relinquish the same, provided that it has since been determined that the land embraced in such entry or all thereof in excess of twenty acres is not or will not be irrigable under the project, and in lieu thereof may select and make entry for any farm unit included within such irrigation project as finally established, notwithstanding the provisions of section five of the act of June twenty-fifth, nineteen hundred and ten, entitled "An act to authorize advances to the reclamation fund," and so forth, and acts amendatory thereof: *Provided,* That such entryman shall be given credit on the new entry for the time of bona fide residence maintained on the original entry.

2. Applications to make new entry under the provisions of this act must be on the form provided for homestead applications, must contain the land-office number and the description of the former entry, a relinquishment of the former entry and an affidavit by the applicant showing the facts upon which he claims to be entitled to the provisions of this act. The showing filed by the applicant must be immediately transmitted to the project manager of the Reclamation Service for his report and recommendation thereon, and upon the receipt thereof you will transmit all the papers to this office with your recommendation thereon. You will indorse on the face of each such application the fact that it is under the provisions of the act of March 4, 1915 (Public No. 331).

3. Where such application is filed in the same land district in which the former entry was made it will take the serial number of the old entry. Where the area of the farm unit applied for is in excess of the area of the former entry, fee and commissions for such excess area must accompany the application.

4. This act permits a new entry only where the former entry was made subject to the provisions of the act of June 17, 1902 (32 Stat., 388), for land which was believed to be susceptible of irrigation, where it has since been determined that the land embraced in such entry or all thereof in excess of 20 acres is not or will not be irrigable under the project. This act permits the new entry to be made only within the same project as the former entry, nor may any land be entered under this act until such land has been designated as a farm unit. Any such farm unit entered under this act will be subject to conformation to a new farm unit, in the discretion of the department, and will be subject to all the charges, terms, conditions, and limitations of the act of June 17, 1902 (32 Stat., 388), and acts supplemental thereto and amendatory thereof.

5. In order that there may be uniformity in the administration of this act, no applications hereunder will be allowed by local officers on their own initiative, but all will be forwarded to the General Land Office for consideration.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved:

Bo SWEENEY,

Assistant Secretary.

In reply please refer to Circular No. 419.

"M" CTMC

DEPARTMENT OF THE INTERIOR

General Land Office

Washington

June 30, 1915.

ACCOUNTS: Compensation based upon
cash sales of Indian
lands.

Registers and Receivers,

United States Land Offices.

Sirs:

The Comptroller of the Treasury has rendered the following decision which is promulgated for your benefit:

"TREASURY DEPARTMENT

Washington

June 18, 1915.

The Honorable

The Secretary of the Interior.

Sir:

I have your letter of June 12, 1915, requesting a decision as to whether registers and receivers of the United States Land Offices are entitled to commission on sales of Indian lands when the laws under which the sales are held do not provide for the payment of commissions.

Registers' and receivers' duties are prescribed by the act of July 27, 1898 (30 Stat., 234), which amends section 2234 of the Revised Statutes, and which provides:

'Section 2234. There shall be appointed by the President, by and with the advice and consent of the Senate, a register of the land office and a receiver of public moneys for each land district established by law, who shall have charge of and attend to the sale of public and Indian lands within their respective districts, as provided by law and official regulations, and receivers shall be accountable under their official bonds for the proceeds of such sales, and for all fees, commissions, or other moneys received by them under any provision of law or official regulation.'

Compensation of these officers is fixed by section 2238, Revised Statutes, which provides:

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'Section 2238. Registers and receivers, in addition to their salaries, shall be allowed each the following fees and commissions, namely:

Second. A commission of one per centum on all moneys received at receiver's office.'

Under section 2234, Revised Statutes, as amended, it is now the duty of registers and receivers to 'have charge of and attend to the sale of' Indian lands in the same manner as the sale of public lands, and, consequently, section 2238, Revised Statutes, should be considered as the basis for computing payment for their services in connection with sale of Indian lands the same as in the sale of public lands. Of course, if the act providing for the sale of Indian lands limits the amount of commissions these officers are entitled to receive, it would be controlling, but, in all cases where the act authorizing the sale of Indian lands is silent as to the rate of commissions to be allowed registers and receivers, they are entitled to the commission provided for in section 2238, Revised Statutes, not to exceed the maximum prescribed in section 2240, Revised Statutes. (See 21 Comp. Dec., 251).

Your question is answered accordingly.

Respectfully,

GEO. E. DOWNEY,
Comptroller. "

Section 2240, United States Revised Statutes, noted above, provides:

"Sec. 2240. The compensation of registers and receivers, including salary, fees, and commissions, shall in no case exceed in the aggregate three thousand dollars a year each; and no register or receiver shall receive for any one quarter or fractional quarter more than a pro rata allowance of such maximum."

The claims of the register and receiver must be stated on form 4-665-g, in duplicate, using one of the blank lines for the purpose under the caption

"1 per cent. commissions on (name) Indian cash sales, as per abstract."

If there are sales of land involving more than one Indian Reservation such Indian fund must be set forth as a separate voucher and not consolidated as one item.

The payment of the claims will be made by the Receiver of Public Moneys in his account under said title and bond, and not under his title and bond as Special Disbursing Agent.

IN THE COURT OF THE DISTRICT OF COLUMBIA
IN AND FOR THE DISTRICT OF COLUMBIA
IN THE MATTER OF THE ESTATE OF
JAMES M. SMITH, DECEASED
JAMES M. SMITH, DECEASED
BY WILLIAM H. SMITH, ADMINISTRATOR
PLAINTIFF
VS.
JOHN D. SMITH, DEFENDANT
FILED FOR RECORD
JANUARY 10, 1912
CLERK OF THE COURT

IN THE COURT OF THE DISTRICT OF COLUMBIA
IN AND FOR THE DISTRICT OF COLUMBIA
IN THE MATTER OF THE ESTATE OF
JAMES M. SMITH, DECEASED
JAMES M. SMITH, DECEASED
BY WILLIAM H. SMITH, ADMINISTRATOR
PLAINTIFF
VS.
JOHN D. SMITH, DEFENDANT
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JANUARY 10, 1912
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IN THE COURT OF THE DISTRICT OF COLUMBIA
IN AND FOR THE DISTRICT OF COLUMBIA
IN THE MATTER OF THE ESTATE OF
JAMES M. SMITH, DECEASED
JAMES M. SMITH, DECEASED
BY WILLIAM H. SMITH, ADMINISTRATOR
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FILED FOR RECORD
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CLERK OF THE COURT

IN THE COURT OF THE DISTRICT OF COLUMBIA
IN AND FOR THE DISTRICT OF COLUMBIA
IN THE MATTER OF THE ESTATE OF
JAMES M. SMITH, DECEASED
JAMES M. SMITH, DECEASED
BY WILLIAM H. SMITH, ADMINISTRATOR
PLAINTIFF
VS.
JOHN D. SMITH, DEFENDANT
FILED FOR RECORD
JANUARY 10, 1912
CLERK OF THE COURT

Circular No. 419--3.

The total amount of the claims of both officers, in case of minimum offices only, must be debited the United States under the proper Indian fund or funds on one of the blank lines of the account current (form 4-104-a), and in making the deposits to the credit of the Treasurer of the United States, the said amount will be deducted therefrom and paid to each officer.

The vouchers must accompany the Receiver of Public Money's account current on form 4-104-a.

The total amount paid to the register or receiver, including salary, fees, and commissions, and the commissions on Indian lands, must not exceed \$3000 to each officer in any one fiscal year.

The total amount actually earned by each officer as compensation may be paid to him, provided, that at the date of payment it does not exceed the pro-rate share of the maximum amount of \$3000 per annum allowed by law.

The excess of the maximum of earnings of any month within a fiscal year may be applied to minimum of earnings of any month within the same fiscal year, but the excess of maximum earnings of one fiscal year must not be applied to the minimum earnings of another year.

The excess of earnings of one appointment must not be applied to the minimum earnings of another appointment, even though it be of the same officer, and within the same or different fiscal years.

Very respectfully,

CLAY TALLMAN,

Commissioner.

6-25. SGH.

11

The Commission of the European Communities is composed of representatives of the member states, who are elected by the member states for a period of five years. The Commission is responsible for the day-to-day management of the Community and for the implementation of the Community's policies. It is also responsible for the management of the Community's budget and for the implementation of the Community's financial regulations. The Commission is headed by a President, who is elected by the member states for a period of five years. The President is assisted by a Vice-President and by a number of Commissioners. The Commission is also assisted by a number of departments, which are responsible for the implementation of the Community's policies in various fields. The Commission is also responsible for the management of the Community's budget and for the implementation of the Community's financial regulations. The Commission is also responsible for the management of the Community's external relations and for the implementation of the Community's external policies. The Commission is also responsible for the management of the Community's internal relations and for the implementation of the Community's internal policies. The Commission is also responsible for the management of the Community's social and cultural policies and for the implementation of the Community's social and cultural policies. The Commission is also responsible for the management of the Community's environmental policies and for the implementation of the Community's environmental policies. The Commission is also responsible for the management of the Community's transport and energy policies and for the implementation of the Community's transport and energy policies. The Commission is also responsible for the management of the Community's research and development policies and for the implementation of the Community's research and development policies. The Commission is also responsible for the management of the Community's education and training policies and for the implementation of the Community's education and training policies. The Commission is also responsible for the management of the Community's health and consumer protection policies and for the implementation of the Community's health and consumer protection policies. The Commission is also responsible for the management of the Community's justice and internal security policies and for the implementation of the Community's justice and internal security policies. The Commission is also responsible for the management of the Community's foreign and security policies and for the implementation of the Community's foreign and security policies. The Commission is also responsible for the management of the Community's economic and financial policies and for the implementation of the Community's economic and financial policies. The Commission is also responsible for the management of the Community's social and cultural policies and for the implementation of the Community's social and cultural policies. The Commission is also responsible for the management of the Community's environmental policies and for the implementation of the Community's environmental policies. The Commission is also responsible for the management of the Community's transport and energy policies and for the implementation of the Community's transport and energy policies. The Commission is also responsible for the management of the Community's research and development policies and for the implementation of the Community's research and development policies. The Commission is also responsible for the management of the Community's education and training policies and for the implementation of the Community's education and training policies. The Commission is also responsible for the management of the Community's health and consumer protection policies and for the implementation of the Community's health and consumer protection policies. The Commission is also responsible for the management of the Community's justice and internal security policies and for the implementation of the Community's justice and internal security policies. The Commission is also responsible for the management of the Community's foreign and security policies and for the implementation of the Community's foreign and security policies. The Commission is also responsible for the management of the Community's economic and financial policies and for the implementation of the Community's economic and financial policies.

Part 1047 CFR.

Still in effect
5/26/54 AB.

amended in Part by
Circ. 1557

CIRCULAR No. 423.

**REVISED REGULATIONS GOVERNING AMENDMENT OF ENTRIES
PURSUANT TO SEC. 2372, R. S., AS AMENDED BY ACT OF
FEBRUARY 24, 1909 (35 STAT., 645), AND OTHERWISE.**

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 10, 1915.

REGISTERS AND RECEIVERS,
UNITED STATES LAND OFFICES.

SIRS: Section 2372, United States Revised Statutes, as amended by the act of Congress approved February 24, 1909 (35 Stat., 645), reads as follows:

SEC. 2372. In all cases where an entry, selection, or location has been or shall hereafter be made of a tract of land not intended to be entered, the entryman, selector, or locator, or, in case of his death, his legal representatives, or, when the claim is by law transferable, his or their transferees, may, in any case coming within the provisions of this section, file his or their affidavit, with such additional evidence as can be procured showing the mistake as to the numbers of the tract intended to be entered and that every reasonable precaution and exertion was used to avoid the error, with the register and receiver of the land district in which such tract of land is situate, who should transmit the evidence submitted to them, in each case, together with their written opinion both as to the existence of the mistake and the credibility of every person testifying thereto, to the Commissioner of the General Land Office, who, if he be entirely satisfied that the mistake has been made and that every reasonable precaution and exertion has been made to avoid it, is authorized to change the entry and transfer the payment from the tract erroneously entered to that intended to be entered, if the same has not been disposed of and is subject to entry, or if not subject to entry, then to any other tract liable to such entry, selection, or location; but the oath of the person interested shall in no case be deemed sufficient, in the absence of other corroborating testimony, to authorize such change of entry, nor shall anything herein contained affect the right of third persons.

For the purpose of governing the administration of the provisions of this statute and to define the circumstances under which amendments of entries will be granted pursuant to its provisions, or by virtue of the authority of the department to recognize and establish rights and equities not strictly within the purview and contemplation of such statute, the following rules are provided and will be followed:

1. Applications for amendment must be filed in the local land office of the United States having jurisdiction over the land sought to be entered, and should be substantially in accordance with the printed form herewith. This form may be used for the amendment of nonmineral entries where the applicant is either the original entryman, the assignee, or transferee, by making such modifications as the facts may justify. Each application must be verified by the oath of the applicant and corroborating witnesses, and must describe the land erroneously entered, as well as that desired by way of amendment, by subdivision, section, township, and range; and where the land originally intended to be entered has been disposed of the applicant must describe that land also and show why he can not obtain it.

2. The application must contain a full statement of all the facts and circumstances, showing how the mistake occurred and what precautions were taken prior to the filing of the erroneous entry, selection, or location, to avoid error in the description. The showing in this regard must be complete, because no amendment will be allowed unless it is made to appear that proper precaution was taken to avoid error at the time of making the original entry, location, or selection; and where there has been undue delay in applying for amendment, the application will be closely scrutinized, and will not be allowed unless the utmost good faith is shown, and the delay explained to the entire satisfaction of the Commissioner of the General Land Office.

3. The application must also show that no timber or other thing of value has been taken from the land erroneously entered, located, or selected; that the land sought by way of amendment is not occupied or claimed by any adverse claimant; that it is of the character contemplated by the law under which the claim is presented, and, in cases of nonmineral claims, the kind and quantity of timber on each legal subdivision applied for must be stated.

4. Where no final certificate has been issued and the amendment is sought by the original claimant, it must be shown that the land embraced in the erroneous entry, location, or selection has not been sold, assigned, relinquished, or in any way encumbered, and for this purpose the affidavit of the applicant, corroborated as hereinafter required, will be sufficient; but where final certificate has issued, or where amendment is sought by a transferee, it must be shown by a certificate from the proper recording officer of the county in which the land is situated, or by satisfactory abstract of title, that the applicant is the owner of such land under the entry, location, or selection, as the case may be, and it must also be shown that there are no liens, unpaid taxes, or other incumbrance charged against the land. Where patent has been issued, reconveyance of the land embraced in the patent must be made by deed executed by the claimant, and also by his wife, if he be married, in accordance with the laws governing the execution of deeds for the conveyance of real estate in the State in which the land is situated, such deed to be accompanied by a satisfactory abstract of title or a certificate from the register of deeds in and for the county in which the land is situated, showing the title to be clear and free of incumbrance.

5. The affidavit of the applicant must be corroborated by at least two witnesses who have been well acquainted with him for a sufficient length of time to enable them to testify as to the character and reputation of the applicant for truth and veracity. At least one witness must verify the allegations of the application on his personal knowledge of the facts therein stated, so far as such facts may well be known to anyone other than the applicant, and as to other facts, including those concerning the applicant's intent or purpose, such witness may testify on information and belief.

6. The affidavit of the applicant must be executed before the register or receiver of the land office where the application is made, or before a United States commissioner, or before the judge or clerk of any court of record in the county, parish, or land district in which the lands are situated, as required by the act of March 4, 1904 (33

Stat., 59). The corroborating affidavits may be made before any officer authorized to administer oaths and using a seal.

7. When an application to amend is filed in your office, you will make proper notations on your records and forward it to the General Land Office with your monthly returns, with your recommendation written at the place indicated in the form, and thereafter you will make no disposition of the land applied for until instructed by the General Land Office.

8. When an application to amend is received in the General Land Office, together with proper report and recommendation from the register and receiver, it will be considered, and, if found satisfactory, the amendment will be allowed and proper correction made on the records, of which you will be duly advised, to the end that the necessary corrections may be made on the records of your office and the applicant properly notified. Where an application is denied, an appeal may be taken to the department.

9. Where amendments are allowed of claims upon which final proof has been submitted, and publication or posting of notice is required, republication of notice applicable to the class of entry for which application to amend is made will be required; and if the land sought by way of amendment is the land originally intended to be entered, the witnesses who testified when the final proof was made on the erroneous entry must make affidavit, showing that the land described in the application for amendment is the same land to which they intended to refer in their testimony, formerly given. If, however, the same witnesses can not be secured, or if the land sought by way of amendment is not the land originally intended to be entered, new proof must be made.

10. The statute to which the foregoing regulations refer does not, in terms, provide for amendment of an entry, selection, or location for the purpose of correcting any error other than such as affects and pertains to the description of the lands entered and intended to be entered. Nevertheless, in the exercise of its equitable power and authority, the department will grant amendment of an entry, made for the purpose of securing a home upon the public lands, or for the purpose of effecting reclamation in accordance with the provisions of the desert land law, in any case where it is satisfactorily shown that, through no fault or neglect of the entryman, the land embraced by his entry is so far unfit for, or insusceptible of, occupancy, cultivation, or irrigation, as to render it practically impossible to perform the requirements of the law thereon.

11. Amendment for the purpose of enlarging the area of a desert land entry will be granted under and in the conditions and circumstances now to be stated.

(a) In any case where it is satisfactorily disclosed that entry was not made to embrace the full area which might lawfully have been included therein because of existing appropriations of all contiguous lands then appearing to be susceptible of irrigation through and by means of entryman's water supply, or of all such lands which seemed to be worthy of the expenditure requisite for that purpose, said lands having since been released from such appropriations.

(b) Where contiguous tracts have been omitted from entry because of entryman's belief, after a reasonably careful investigation, that

they could not be reclaimed by means of the water supply available for use in that behalf, it having been subsequently discovered that reclamation thereof can be effectively accomplished by means of a changed plan or method of conserving or distributing such water supply.

(c) Where, at the time of entry, the entryman announced, in his declaration, his purpose to procure the cancellation, through contest or relinquishment, of an entry embracing lands contiguous to those entered by him, and thereafter to seek amendment of his entry in such manner as to embrace all or some portion of the lands so discharged from entry.

12. Applications for amendment presented pursuant to rule 10 will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within one year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within one year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless*, That where an applicant for amendment has made both homestead and desert land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry, sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under the rules given above and on the prescribed form, in so far as the same are applicable. A supplemental affidavit should also be furnished, if necessary, to show the facts.

13. Application to amend desert land entries by the addition of a new and enlarged area or by transferring the entry to lands not originally selected for entry must be accompanied by evidence of applicant's right to the use of water sufficient for the adequate irrigation of said enlarged area or of the lands to which entry is to be transferred. Such evidence must be in the form prescribed by paragraph 12 of the circular of September 30, 1910, as amended March 23, 1914, and the provisions of paragraph 13 thereof, as amended February 25, 1915 (Circular No. 383).

14. Where entries, selections, or locations are improperly allowed by the land department, as where the lands are not subject to such entries, selections, or locations, amendments will not be allowed, because such claims, being invalid, should be canceled, and upon cancellation thereof a new entry, selection, or location may be allowed as though the former had never been made.

15. Amendment of an entry becomes effective, by relation, as of the date of the original entry in all cases except where the effect of the amendment is to transfer the entry in its entirety to lands other than those originally selected for entry. In all cases, therefore, where amendment is granted to correct a mistake in description and to effect the entryman's original intention, or to increase

merely the area embraced by the entry, such amendment will not be effective to alter the time within which the requirements of the law must be complied with. In other cases, the date of the amendment will be treated as the date of the entry and the time within which residence is to be established or proof of any kind submitted will be computed from that date.

The circular of April 22, 1909 (37 L. D., 655), and all other circulars or instructions concerning amendments incompatible herewith, are hereby revoked.

CLAY TALLMAN, *Commissioner*.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

**FORM FOR USE IN SUBMITTING APPLICATION FOR AMENDMENT IN
ACCORDANCE WITH FOREGOING REGULATIONS.**

[Approved by the Secretary of the Interior July 10, 1915.]

DEPARTMENT OF THE INTERIOR,
U. S. Land Office,

I,, of (post-office address), having made entry (selection or location) for the, section, township, range, meridian (describe former claim by subdivision, section, township, range and meridian), do hereby apply for amendment thereof in such manner and with such effect as that, when so amended, said entry will include and embrace the following-described lands, and no others, to wit: (here insert description of land which it is desired to have the amended entry embrace, in the manner as above indicated): And, being first duly sworn, upon my oath do say that I originally intended to make entry of (describe lands intended to be entered); that, as the consequence of mistake and misinformation, said entry (selection or location) was not made to embrace all (or any portion) of the lands so intended to be entered, but, on the contrary, included and embraced lands not selected or intended to be entered by me, and which I do not desire to keep and retain in my said entry (selection or location); that the error or mistake from which I desire relief, and the reason why I do not desire to maintain and perfect the entry as now made and recorded, will be now stated and explained as follows: (Set out fully a statement of the cause of the error in making entry and of the reason why amendment is necessary or desirable. Applicant should also state when his error or mistake was discovered and why it was not sooner discovered.)

I do further declare that I am well acquainted with the character of the land now applied for, and with each and every legal subdivision thereof, having been upon and over each and every portion thereof; and from my personal knowledge I do swear that there is not within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or any deposit of coal, nor within the limits of said land any placer, cement, gravel, or other valuable mineral deposit; nor is there any salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes, under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral, during any part of the year, by any person or persons; that said land is essentially nonmineral land; and that my application therefor is not for the purpose of fraudulently obtaining title to mineral land; and that the land applied for is not occupied or claimed by any adverse claimant.

The character of the land applied for is as follows: (Describe the character of the land by legal subdivisions, and state amount and kind of timber on each subdivision, if any. If the application pertains to an entry under the enlarged homestead law, it should be shown whether any of the land contains merchantable timber, and whether any portion is susceptible of irrigation at a reasonable cost from any known source of water supply.)

Applicant further avers that the lands embraced in his entry, as now existing and of record, are in the same state and condition as when entry was made by him, no

timber or other thing of value having been removed therefrom by applicant, or by any other person, by his procurement, or with his consent and acquiescence; that I have not sold, assigned, transferred, or relinquished said land, or any portion thereof, or obligated myself to do so.

.....
(Sign here with full Christian name.)

I hereby certify that the foregoing affidavit was read to or by affiant, in my presence, before affiant affixed signature thereto; that affiant is to me personally known, or has been satisfactorily identified before me by (give full name and post-office address); that I verily believe affiant to be a qualified applicant and the identical person hereinbefore described; and that said affidavit was duly subscribed and sworn to before me, at my office, in (town), (county and State), within the land district, this day of, 19....

.....
(Official designation of officer.)

We, (give full Christian name), of (give full post-office address), years of age, and by occupation do solemnly swear that we have been well acquainted with the above applicant for years and years, respectively; that we have read the statements made by him above; that he is a person of truth and veracity; and we believe said statements to be true.

.....
(Sign here with full Christian name.)

.....
(Sign here with full Christian name.)

I hereby certify that the foregoing affidavit was read to or by affiants in my presence before affiants affixed signatures thereto; that affiants are to me personally known, or have been satisfactorily identified before me by (give full name and post-office address); that I verily believe affiants to be credible witnesses and the identical persons hereinbefore described, and that said affidavit was duly subscribed and sworn to before me, at my office, in (town), (county and State), within the land district, this day of, 19....

.....
(Official designation of officer.)

NOTE.—In addition to the affidavits provided for by above forms, the application must also be accompanied by the affidavit of at least one person who testifies to the facts concerning the alleged mistake from his own personal knowledge, in so far as those facts may, or might be expected to be, known to any person other than the applicant himself. Such affidavit must disclose what opportunity of knowledge the witness has had, including the extent of his acquaintance with the applicant, his familiarity with the land involved, and other pertinent facts and conditions. If the application pertains to an entry under the enlarged homestead law, the applicant's statements as to the character of the land must be corroborated.

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IN REPLY PLEASE REFER TO CIRCULAR NO. 427

Part 166

*Still effect 5/27/54
See Circ 541*

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

WASHINGTON

JULY 27, 1915.

INDIAN HOMESTEADERS.

REGISTERS AND RECEIVERS,
UNITED STATES LAND OFFICES.

SIRS:

Certain local land officers having interpreted Circular No. 394, dated March 29, 1915, as requiring all Indians who submit applications to make homestead entry, under authority of the act of July 4, 1884 (23 Stat., 96), or under the general homestead act, to furnish a certificate from the Commissioner of Indian Affairs that the applicant is entitled, as an Indian, to make such entry, you are hereby informed that this certificate should be required only of applicants under the act of July 4, 1884 (23 Stat., 96), from whom no fee or commissions are required.

If an Indian making application under the general homestead act makes affidavit that he is a citizen of the United States, having abandoned his tribal relations and adopted the habits and customs of civilized persons, you will allow such an Indian, if otherwise qualified, to make entry under the regular homestead act, without further questioning and without requiring any certificate from the Commissioner of Indian Affairs.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

In reply please refer to Circular No. 428.

"K" - R.C.W.

DEPARTMENT OF THE INTERIOR

General Land Office

Washington

August 4, 1915.

: Proofs of reclamation.

Registers and Receivers,

United States Land Offices.

Sirs:

It has been noted that in a large number of cases in which proof of reclamation and of the payment of water-right charges in connection with homestead and desert land entries within government irrigation projects and subject to the provisions of the act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof and supplementary thereto, are submitted the final affidavits submitted by the claimants purporting to show reclamation of the lands and payment of the water-right charges to date, as the basis for the issuance of final certificates and patents upon such entries, under the provisions of the act of August 9, 1912 (37 Stat., 265), and the act of August 26, 1912 (37 Stat., 510), do not meet the requirements of the departmental regulations.

Paragraph 56 of the General Reclamation Circular, approved September 6, 1913 (42 L. D., 349), as amended by departmental order of June 4, 1914, requires that an entryman in submitting proof of reclamation must show the growth of satisfactory crops on at least one-half of the irrigable area of his entry for the two years next preceding the date of the approval of such proof of reclamation by the project manager. In a large number of cases recently adjudicated by this office, it has been found that project managers of the various reclamation projects have approved final affidavits in which compliance with this re-

STATE OF NEW YORK

1934

IN SENATE

JANUARY 1, 1934

REPORT

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Circular No. 428--2.

quirement is not shown, and that you have issued final certificates on such entries. This necessitates the holding of such final certificates for cancellation by this office, and the requirement that the entryman submit supplemental proof of reclamation of his land, as defined by departmental regulations above cited.

Paragraph 55 of the General Reclamation Circular, supra, with reference to the submission of proof of reclamation of the land and of the payment of water-right charges due in connection therewith to the date of the issuance of final certificate and patent, provides:

"Homestead and desert land entrymen in making proof of compliance with the reclamation law as to reclamation of one-half of the irrigable area and payment of reclamation charges due, must submit an affidavit, duly corroborated by two witnesses, in duplicate, to the project manager showing these facts. Thereupon, it shall be the duty of the project manager to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. If he finds that the statement as to payment be correct he will so certify, which certificate will also show the date on which the next payment is due; but if he finds that all payments have not been made as required he will advise the entryman thereof, requiring him to pay the amounts found to be unpaid and due, with a right of appeal in the entryman from such requirement to the Director of the Reclamation Service and ultimately to the Secretary of the Interior."

In a large number of cases recently adjudicated in this office, it has been found that project managers do not comply with the requirements of the above regulation with respect to the certificate as to the payment of water-right charges. The certificates of the project managers do not show that all payments due to date have been made, nor when the next instalment of water-right charges will become due. Failure to make proper certificates by the project managers in such cases necessitates this office calling upon the Director of the Reclamation

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Circular No. 428--3.

Service for the status of the entryman's water-right account, and it has frequently been found that final affidavits have been approved by the project managers and final certificates issued upon entries upon which instalments of water-right charges were due and unpaid.

You will in the future reject, subject to the right of appeal to this office, all final affidavits filed in your office which do not fully meet the requirements of the departmental regulations above set forth.

A strict compliance with the provisions hereof will be expected of you.

Very respectfully,

CLAY TALLMAN,

Commissioner.

In reply please refer to Circular No. 429.

DEPARTMENT OF THE INTERIOR

General Land Office

Washington

August 5, 1915.

: Revision of Paragraph 20, Cir-
: cular No. 105, of May 4, 1912.

Registers and Receivers,
United States Land Offices.

Sirs:

Paragraph 20 of Circular No. 105, of May 4, 1912, is hereby revised to read as follows:

Where an application to locate soldiers' additional rights under Secs. 2306 and 2307, R. S., is held for rejection by the General Land Office, and the applicant accepts the holding and files a substitute soldier's additional right, such substitute right should be accompanied by a formal application (Form 4-008a) duly executed. As the substitution amounts to a waiver of all rights under the rejected application, the substituted right should be given a new serial number. Publication and posting must be made as required by the circular of February 21, 1908 (36 L. D., 278), and a copy of the notice of publication must be forwarded to the chief of field division for his indorsement in accordance with the circular of April 24, 1907 (35 L. D., 681), except in Alaska, where publication and posting must be made in accordance with Sec. 10, act of May 14, 1898 (30 Stat., 409), and instructions of January 13, 1904 (32 L. D., 424-38-42), and Circular No. 197 (41 L. D., 356). The above covers cases in which the entire right has been held to be invalid, and has no bearing whatever on the so-called "combination" cases. Where a part of a combination of rights is held to be invalid and new rights substituted therefor, a formal application (Form 4-008a) should not be filed, and a new serial number should not be assigned. Applications to locate soldiers' additional rights must in no instance be considered by registers and receivers for allowance, but must be transmitted with the returns for the month in which filed. Publication and posting should be started within twenty days from the date of filing and when completed should be transmitted by separate letter and not with the monthly returns. The register must date and sign his certificate to such applications. In every case the applicant must be designated as assignee of the soldier, or soldiers, and care observed to give the soldier's full name. Fees and commissions in connection with soldiers' additional applications are not required to be tendered at the time of filing. If tendered the receiver must, of course, issue receipts therefor.

No such application should be received by the district officers unless accompanied by evidence of the right, or by a reference to the case by land office, serial number and description of the land, containing such evidence.

CLAY TALLMAN,

Commissioner.

APPROVED:

A. A. JONES,
First Assistant Secretary.

1944

CIRCULAR NO. 430

UNITED STATES MINING LAWS AND REGULATIONS THEREUNDER

APPROVED AUGUST 6, 1915

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B.R. Giddings

E. M. V. Hay

CIRCULAR No. 430

Coal reserved to the U. S. Act June 22, 1910

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

Superseded

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*See 1828 to
1870*

UNITED STATES MINING LAWS

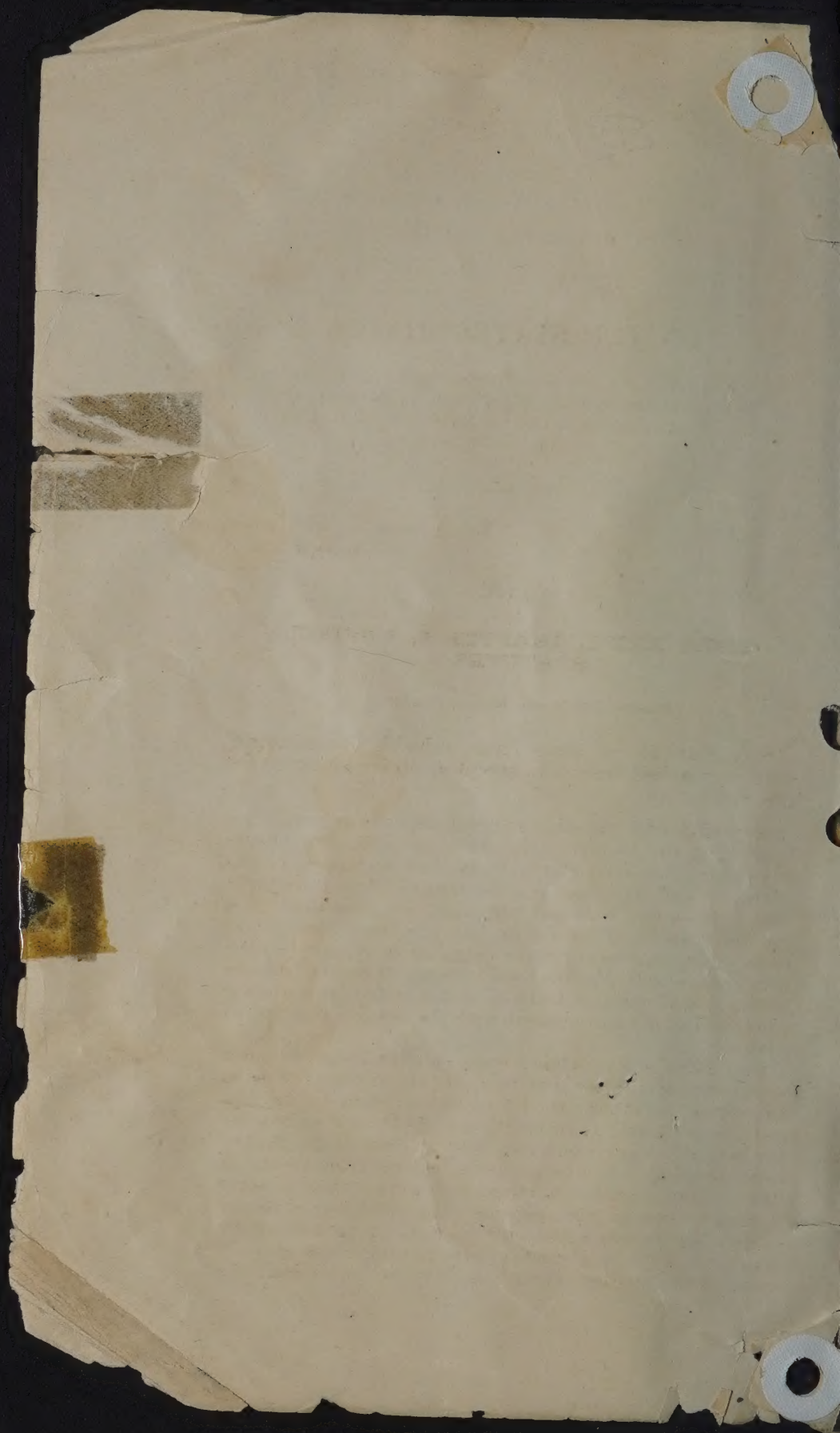
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APPROVED AUGUST 6, 1915



WASHINGTON
GOVERNMENT PRINTING OFFICE
1915



UNITED STATES MINING LAWS,

AND REGULATIONS THEREUNDER, RELATIVE TO THE RESERVATION, EXPLORATION, LOCATION, POSSESSION, PURCHASE, AND PATENTING OF THE MINERAL LANDS IN THE PUBLIC DOMAIN.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.

LAWS.

TITLE XXXII, CHAPTER 6, REVISED STATUTES.

Mineral Lands and Mining Resources.

SEC. 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

Mineral
lands reserved.

4 July, 1866,
c. 166, s. 5, v.
14, p. 86.

SEC. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.

Mineral
lands open to
purchase by
citizens.

10 May, 1872,
c. 152, s. 1, v.
17, p. 91.

SEC. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the

Length of
mining claims
upon veins or
lodes.

10 May, 1872,
c. 152, s. 2, v.
17, p. 91.

limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end lines of each claim shall be parallel to each other.

Proof of citizenship.

10 May, 1872,
c. 152, s. 7, v.
17, p. 94.

SEC. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

Locators' rights of possession and enjoyment.

10 May, 1872,
c. 152, s. 3, v.
17, p. 91.

SEC. 2322. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

Owners of tunnels, rights of.

10 May, 1872,
c. 152, s. 4, v.
17, p. 92.

SEC. 2323. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof, not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of

the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid, but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

SEC. 2324. The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year thereafter, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section his interest in the claim shall become the property of his co-owners who have made the required expenditures.

SEC. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has,

Regulations
made by min-
ers.

10 May, 1872,
c. 152, s. 5, v.
17, p. 92.

Patents for
mineral lands,
how obtained.

10 May, 1872,
c. 152, s. 6, v.
17, p. 92.

or have, complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

A d v e r s e
claim, proceed-
ings on.

10 May, 1872,
c. 152, s. 7, v.
17, p. 93.

SEC. 2326.¹ Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty

¹ See also act June 7, 1910 (36 Stat. L., 459), extending the time in which to file adverse claims and institute adverse suits with respect to mineral applications in Alaska (p. 30).

days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the register to the Commissioner of the General Land Office, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining claim to any person whatever.

SEC. 2327. The description of vein or lode claims upon surveyed lands shall designate the location of the claims with reference to the lines of the public survey, but need not conform therewith; but where patents have been or shall be issued for claims upon unsurveyed lands, the surveyors-general, in extending the public survey, shall adjust the same to the boundaries of said patented claims so as in no case to interfere with or change the true location of such claims as they are officially established upon the ground. Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the official survey upon which the patent grant is based, and surveyors-general in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the descriptions of said claims in the patents issued therefor the monuments on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto.

Description
of mining vein
or lode claims.

10 May, 1872,
c. 152, s. 8, v.
17, p. 94.
Amended
Apr. 28, 1904
(33 Stat., 545).

Patents to
conform to
official monu-
ments.

Monuments
to govern de-
scriptions.

Pending applications; existing rights.

10 May, 1872, c. 152, s. 9, v. 17, p. 94.

SEC. 2328. Applications for patents for mining claims under former laws now pending may be prosecuted to a final decision in the General Land-Office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

Conformity of placer claims to surveys, limit of.

9 July, 1870, c. 235, s. 12, v. 16, p. 217.

SEC. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

Subdivisions of ten-acre tracts; maximum of placer locations.

9 July, 1870, c. 235, s. 12, v. 16, p. 217.

SEC. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide preemption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser.

Conformity of placer claims to surveys, limitation of claims.

10 May, 1872, c. 152, s. 10, v. 17, p. 94.

SEC. 2331. Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or preemption purposes.

What evidence of possession, &c., to establish a right to a patent.

9 July, 1870, c. 235, s. 13, v. 16, p. 217.

SEC. 2332. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this

chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to any mining claim or property thereto attached prior to the issuance of a patent.

SEC. 2333. Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim and twenty-five feet of surface on each side thereof. The remainder of the placer claim or any placer claim not embracing any vein or lode claim shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

Proceedings
for patent for
placer claim,
&c.

10 May, 1872,
c. 152, s. 11, v.
17, p. 94.

SEC. 2334. The surveyor-general of the United States may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land district where mines are situated for the publication of mining notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land office, which statement shall be transmitted, with the

Surveyor-
general to ap-
point survey-
ors of mining
claims, &c.

10 May, 1872,
c. 152, s. 12, v.
17, p. 95.

other papers in the case, to the Commissioner of the General Land Office.

Verification
of affidavits,
&c.

10 May, 1872,
c. 152, s. 13, v.
17, p. 95.

SEC. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party can not be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

Where veins
intersect, &c.

10 May, 1872,
c. 152, s. 14, v.
17, p. 96.

SEC. 2336. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

Patents for
nonmineral
lands, &c.

10 May, 1872,
c. 152, s. 15, v.
17, p. 96.

SEC. 2337. Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.

What condi-
tions of sale
may be made
by local legis-
lature.

26 July, 1866,
c. 262, s. 5, v.
14, p. 252.

Vested rights
to use of water
for mining, &c.;
right of way
for canals.

26 July, 1866,
c. 262, s. 9, v.
14, p. 253.

SEC. 2338. As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

SEC. 2339. Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors

and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

SEC. 2340. All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.

Patents, pre-
emptions, and
homesteads
subject to vested
and accrued
water rights.

SEC. 2341. Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of preemption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter five of this Title, relating to "Homesteads."

9 July, 1870,
c. 235, s. 17, v.
16, p. 218.

Mineral
lands in which
no valuable
mines are dis-
covered open
to homesteads.

26 July, 1866,
c. 262, s. 10, v.
14, p. 253.

SEC. 2342. Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to preemption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

Mineral
lands, how set
apart as agri-
cultural lands.

26 July, 1866,
c. 262, s. 11, v.
14, p. 253.

SEC. 2343. The President is authorized to establish additional land districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

Additional
land districts
and officers,
power of the
President to
provide.

26 July, 1866,
c. 262, s. 7, v.
14, p. 252.

SEC. 2344. Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled "An act granting to A. Suro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six.

Provisions of
this chapter
not to affect
certain rights.

10 May, 1872,
c. 152, s. 16, v.
17, p. 96.

9 July, 1870,
c. 235, s. 17, v.
16, p. 218.

Mineral
lands in cer-
tain States ex-
cepted.

18 Feb., 1873,
c. 159, v. 17,
p. 463.

SEC. 2345. The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions, in like manner as before the tenth day of May, eighteen hundred and seventy-two. And any bona fide entries of such lands within the States named since the tenth day of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of preemption as other public lands.

Grant of
lands to States
or corporations
not to include
mineral lands.

30 Jan., 1865,
Res. No. 10, v.
13, p. 567.

SEC. 2346. No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.

ACTS OF CONGRESS PASSED SUBSEQUENT TO THE REVISED STATUTES.

AN ACT To amend the act entitled "An act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two.

Claim lo-
cated prior to
May 10, 1872,
first annual
expenditure ex-
tended to Jan.
1, 1875.

Act of Con-
gress approved
June 6, 1874
(18 Stat. L.,
61).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the fifth section of the act entitled "An act to promote the development of the mining resources of the United States," passed May tenth, eighteen hundred and seventy-two, which requires expenditures of labor and improvements on claims located prior to the passage of said act, are hereby so amended that the time for the first annual expenditure on claims located prior to the passage of said act shall be extended to the first day of January, eighteen hundred and seventy-five.

AN ACT To amend section two thousand three hundred and twenty-four of the Revised Statutes, relating to the development of the mining resources of the United States.

Money ex-
pended in a
tunnel consid-
ered as expend-
ed on the lode.

Act of Con-
gress approved
February 11,
1875 (18 Stat.
L., 315).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section two thousand three hundred and twenty-four of the Revised Statutes be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purpose of developing a lode or lodes, owned by said person or company, the money so

expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such person or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act.

AN ACT To exclude the States of Missouri and Kansas from the provisions of the act of Congress entitled "An act to promote the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That within the States of Missouri and Kansas deposits of coal, iron, lead, or other mineral be, and they are hereby, excluded from the operation of the act entitled "An act to promote the development of the mining resources of the United States," approved May tenth, eighteen hundred and seventy-two, and all lands in said States shall be subject to disposal as agricultural lands.

Missouri and Kansas excluded from the operation of the mineral laws.

Act of Congress approved May 5, 1876 (19 Stat. L., 52).

AN ACT Authorizing the citizens of Colorado, Nevada, and the Territories to fell and remove timber on the public domain for mining and domestic purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all citizens of the United States and other persons, bona fide residents of the State of Colorado, or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said States, Territories, or districts of which such citizens or persons may be at the time bona fide residents, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: *Provided*, The provisions of this act shall not extend to railroad corporations.

Citizens of Colorado, Nevada, and the Territories authorized to fell and remove timber on the public domain for mining and domestic purposes.

Act of Congress approved June 3, 1878 (20 Stat. L., 88).

SEC. 2. That it shall be the duty of the register and the receiver of any local land office in whose district any mineral land may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by this act, within their respective land districts; and, if so, they shall immediately notify the Commissioner of the General Land Office of that fact; and all necessary expenses incurred in making such proper examinations shall be paid

and allowed such register and receiver in making up their next quarterly accounts.

SEC. 3. Any person or persons who shall violate the provisions of this act, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding five hundred dollars, and to which may be added imprisonment for any term not exceeding six months.

AN ACT To amend sections twenty-three hundred and twenty-four and twenty-three hundred and twenty-five of the Revised Statutes of the United States concerning mineral lands.

Application
for patent may
be made by au-
thorized agent.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty-three hundred and twenty-five of the Revised Statutes of the United States be amended by adding thereto the following words: "*Provided*, That where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits: *And provided*, That this section shall apply to all applications now pending for patents to mineral lands."

On unpatented claims period commences on Jan. 1 succeeding date of location.

Act of Congress approved Jan. 22, 1880 (21 Stat. L., 61).

SEC. 2. That section twenty-three hundred and twenty-four of the Revised Statutes of the United States be amended by adding the following words: "*Provided*, That the period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim, and this section shall apply to all claims located since the tenth day of May, anno Domini eighteen hundred and seventy-two."

AN ACT To amend section twenty-three hundred and twenty-six of the Revised Statutes relating to suits at law affecting the title to mining claims.

In action brought title not established in either party.

Act of Congress approved Mar. 3, 1881 (21 Stat. L., 505).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if, in any action brought pursuant to section twenty-three hundred and twenty-six of the Revised Statutes, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title.

AN ACT To amend section twenty-three hundred and twenty-six of the Revised Statutes in regard to mineral lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the adverse claim required by section twenty-three hundred and twenty-six of the Revised Statutes may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or the State or Territory where the adverse claimant may then be, or before any notary public of such State or Territory.

Adverse claim may be verified by agent.

Sec. 1, act of Congress approved Apr. 26, 1882 (22 Stat. L., 49).

SEC. 2. That applicants for mineral patents, if residing beyond the limits of the district wherein the claim is situated, may make any oath or affidavit required for proof of citizenship before the clerk of any court of record, or before any notary public of any State or Territory.

Affidavit of citizenship; before whom made.

Sec. 2, act of Congress approved Apr. 26, 1882 (22 Stat. L., 49).

AN ACT To exclude the public lands in Alabama from the operation of the laws relating to mineral lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That within the State of Alabama all public lands, whether mineral or otherwise, shall be subject to disposal only as agricultural lands: *Provided, however,* That all lands which have heretofore been reported to the General Land Office as containing coal and iron shall first be offered at public sale: *And provided further,* That any bona fide entry under the provisions of the homestead law of lands within said State heretofore made may be patented without reference to an act approved May tenth, eighteen hundred and seventy-two, entitled "An act to promote the development of the mining resources of the United States," in cases where the persons making application for such patents have in all other respects complied with the homestead law relating thereto.

Alabama excepted from the operation of the mineral laws.

Act of Congress approved Mar. 3, 1883 (22 Stat. L., 487).

AN ACT Providing a civil government for Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

SEC. 8. That the said district of Alaska is hereby created a land district, and a United States land office for said district is hereby located at Sitka. The commissioner provided for by this act to reside at Sitka shall be ex officio register of said land office, and the clerk provided for by this act shall be ex officio receiver of public

Mining laws extended to the district of Alaska.

Act of Congress approved May 17, 1884 (23 Stat. L., 24).

moneys, and the marshal provided for by this act shall be ex officio surveyor-general of said district and the laws of the United States relating to mining claims, and the rights incident thereto shall, from and after the passage of this act, be in full force and effect in said district, under the administration thereof herein provided for, subject to such regulations as may be made by the Secretary of the Interior, approved by the President: *Provided*, That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them, but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress: *And provided further*, That parties who have located mines or mineral privileges therein under the laws of the United States applicable to the public domain, or who have occupied and improved or exercised acts of ownership over such claims, shall not be disturbed therein, but shall be allowed to perfect their title to such claims by payment as aforesaid: *And provided also*, That the land not exceeding six hundred and forty acres at any station now occupied as missionary stations among the Indian tribes in said section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which said missionary stations respectively belong until action by Congress. But nothing contained in this act shall be construed to put in force in said district the general land laws of the United States.

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

Right of entry under all the land laws restricted to 320 acres. (Repealed, see act Mar. 3, 1891, sec. 17).

Reservation in patents for right of way for ditches and canals constructed.

Act of Congress approved Aug. 30, 1890 (26 Stat. L., 371).

No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act: *Provided*, That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act west of the one hundredth meridian it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States. * * *

AN ACT To repeal the timber-culture laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

SEC. 16. That town-site entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such town sites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: *Provided*, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

Town sites on mineral lands authorized.

Lands entered under the mineral laws not included in restriction to 320 acres.

Act of Congress approved Mar. 3, 1891 (26 Stat. L., 1095).

SEC. 17. That reservoir sites located or selected and to be located and selected under the provisions of "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes," and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs, excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs, and that the provisions of "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," which reads as follows, viz: "No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not include lands entered or sought to be entered under mineral land laws.

* * * * *

AN ACT To authorize the entry of lands chiefly valuable for building stone under the placer mining laws.

Entry of lands chiefly valuable for building stone under the placer-mining laws.

Act of Congress approved Aug. 4, 1892 (27 Stat. L., 348).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person authorized to enter lands under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer-mineral claims: *Provided,* That lands reserved for the benefit of the public schools or donated to any State shall not be subject to entry under this act.

AN ACT To amend section numbered twenty-three hundred and twenty-four of the Revised Statutes of the United States relating to mining claims.

Requirement of proof of expenditure for the year 1893 suspended except as to South Dakota.

Act of Congress approved Nov. 3, 1893 (28 Stat. L., 6).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of section numbered twenty-three hundred and twenty-four of the Revised Statutes of the United States, which require that on each claim located after the tenth day of May, eighteen hundred and seventy-two, and until patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year, be suspended for the year eighteen hundred and ninety-three, so that no mining claim which has been regularly located and recorded as required by the local laws and mining regulations shall be subject to forfeiture for non-performance of the annual assessment for the year eighteen hundred and ninety-three: *Provided,* That the claimant or claimants of any mining location, in order to secure the benefits of this act shall cause to be recorded in the office where the location notice or certificate is filed on or before December thirty-first, eighteen hundred and ninety-three, a notice that he or they, in good faith intend to hold and work said claim: *Provided, however,* That the provisions of this act shall not apply to the State of South Dakota.

This act shall take effect from and after its passage.

AN ACT To amend section numbered twenty-three hundred and twenty-four of the Revised Statutes of the United States relating to mining claims.

Requirement of proof of expenditure for the year 1894 suspended except as to South Dakota.

Act of Congress approved July 18, 1894 (28 Stat. L., 114).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of section numbered twenty-three hundred and twenty-four of the Revised Statutes of the United States, which require that on each claim located after the tenth day of May, eighteen hundred and seventy-two, and until patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year, be

suspended for the year eighteen hundred and ninety-four, so that no mining claim which has been regularly located and recorded as required by the local laws and mining regulations shall be subject to forfeiture for non-performance of the annual assessment for the year eighteen hundred and ninety-four: *Provided*, That the claimant or claimants of any mining location, in order to secure the benefits of this act, shall cause to be recorded in the office where the location notice or certificate is filed on or before December thirty-first, eighteen hundred and ninety-four, a notice that he or they in good faith intend to hold and work said claim: *Provided, however*, That the provisions of this act shall not apply to the State of South Dakota.

SEC. 2. That this act shall take effect from and after its passage.

AN ACT Making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-six, and for other purposes.

[WICHITA LANDS, OKLAHOMA.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

The said Wichita and affiliated bands of Indians in the Indian Territory hereby cede, convey, transfer, relinquish, forever and absolutely, without any reservation whatever, all their claim, title and interest of every kind and character in and to the lands embraced in the following-described tract of country in the Indian Territory, to wit:

Commencing at a point in the middle of the main channel of the Washita River, where the ninety-eighth meridian of west longitude crosses the same, thence up the middle of the main channel of said river to the line of ninety-eight degrees forty minutes west longitude, thence on said line of ninety-eight degrees forty minutes due north to the middle of the channel of the main Canadian River, thence down the middle of said main Canadian River to where it crosses the ninety-eighth meridian, thence due south to the place of beginning.

* * * * *

That the laws relating to the mineral lands of the United States are hereby extended over the lands ceded by the foregoing agreement.

Lands ceded.

Act of Mar.
2, 1895 (28
Stat. L., 876,
894, 899).

Mineral
laws.

AN ACT Making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, and for other purposes.

* * * *

[FORT BELKNAP INDIAN RESERVATION, MONTANA.]

SEC. 8.

* * * *

Provisos.
Price.
No occupancy
prior to open-
ing.

That upon the filing in the United States local land office for the district in which the lands surrendered by article one of the foregoing agreement are situated, of the approved plat of survey authorized by this section, the lands so surrendered shall be open to occupation, location, and purchase, under the provisions of the mineral-land laws only, subject to the several articles of the foregoing agreement: *Provided*, That said lands shall be sold at ten dollars per acre: *And provided further*, That the terms of this section shall not be construed to authorize the occupancy of said lands for mining purposes prior to the date of filing said approved plat of survey. * * *

[BLACKFEET INDIAN RESERVATION, MONTANA.]

SEC. 9.

* * * *

Proviso.
No occupancy
prior to open-
ing.

That upon the filing in the United States local land office for the district in which the lands surrendered by article one of the foregoing agreement are situated, of the approved plat of survey authorized by this section, the lands so surrendered shall be opened to occupation, location, and purchase under the provisions of the mineral-land laws only, subject to the several articles of the foregoing agreement: *Provided*, That the terms of this section shall not be construed to authorize occupancy of said lands for mining purposes prior to the date of filing said approved plat of survey.

[SAN CARLOS INDIAN RESERVATION, ARIZONA.]

SEC. 10.

* * * *

Provisos.
No occupancy
prior to open-
ing.

Preference to
discoverers of
coal, etc.

That upon the filing in the United States local land office for the district in which the lands surrendered by article one of the foregoing agreement are situated, of the approved plat of survey authorized by this section, the lands so surrendered shall be opened to occupation, location, and purchase under the provisions of the mineral-land laws only, subject to the several articles of the foregoing agreement: *Provided*, That the terms of this section shall not be construed to authorize occupancy of said lands for mining purposes prior to the date of filing said approved plat of survey: *Provided, however*, That any person who in good faith prior to the passage of this

act had discovered and opened, or located, a mine of coal or other mineral, shall have a preference right of purchase for ninety days from and after the official filing in the local land office of the approved plat of survey provided for by this section.

Act of Congress approved June 10, 1896 (29 Stat. L., 353, 357, 360).

AN ACT To authorize the entry and patenting of lands containing petroleum and other mineral oils under the placer mining laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person authorized to enter lands under the mining laws of the United States may enter and obtain patent to lands containing petroleum or other mineral oils, and chiefly valuable therefor, under the provisions of the laws relating to placer mineral claims: *Provided,* That lands containing such petroleum or other mineral oils which have heretofore been filed upon, claimed, or improved as mineral, but not yet patented, may be held and patented under the provisions of this act the same as if such filing, claim, or improvement were subsequent to the date of the passage hereof.

Entry and patenting of lands containing petroleum and other mineral oils under the placer mining laws.

Act of Congress approved Feb. 11, 1897 (29 Stat. L., 526).

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes.

* * * * *

All public lands heretofore designated and reserved by the President of the United States under the provisions of the act approved March third, eighteen hundred and ninety-one, the orders for which shall be and remain in full force and effect, unsuspended and unrevoked, and all public lands that may hereafter be set aside and reserved as public forest reserves under said act, shall be as far as practicable controlled and administered in accordance with the following provisions:

Act of Congress approved June 4, 1897 (30 Stat. L., 34, 35, 36).

No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

Forest reservations, when to be established.

* * * * *

The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, pros-

Use of timber, etc., by settlers, etc.

pecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located.

Egress and ingress of settlers within reservations, etc.

Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservations.

* * * * *

Restoration of mineral or agricultural lands to the public domain.

Upon the recommendation of the Secretary of the Interior, with the approval of the President, after sixty days' notice thereof, published in two papers of general circulation in the State or Territory wherein any forest reservation is situated, and near the said reservation, any public lands embraced within the limits of any forest reservation which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain. And any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions herein contained.

AN ACT Extending the homestead laws and providing for right of way for railroads in the district of Alaska, and for other purposes.

* * * * *

Mining rights in Alaska to native-born citizens of the Dominion of Canada.

Act of Congress approved May 14, 1898 (30 Stat. L., 415).

SEC. 13. That native-born citizens of the Dominion of Canada shall be accorded in said district of Alaska the same mining rights and privileges accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada or the local laws, rules, and regulations; but no greater rights shall be thus accorded than citizens of the United States, or persons who have declared their intention to become such, may enjoy in said district of Alaska; and the Secretary of the Interior shall from time to time promulgate and enforce rules and regulations to carry this provision into effect.

AN ACT Making further provisions for a civil government for Alaska,
and for other purposes.

* * * * *

SEC. 15. The respective recorders shall, upon the payment of the fees for the same prescribed by the Attorney-General, record separately, in large and well-bound separate books, in fair hand:

First. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney, leases which have been acknowledged or proved, mortgages upon personal property;

* * * * *

Ninth. Affidavits of annual work done on mining claims;

Tenth. Notices of mining location and declaratory statements;

Eleventh. Such other writings as are required or permitted by law to be recorded, including the liens of mechanics, laborers, and others: *Provided*, Notices of location of mining claims shall be filed for record within ninety days from the date of the discovery of the claim described in the notice, and all instruments shall be recorded in the recording district in which the property or subject-matter affected by the instrument is situated, and where the property or subject-matter is not situated in any established recording district the instrument affecting the same shall be recorded in the office of the clerk of the division of the court having supervision over the recording division in which such property or subject-matter is situated.

* * * * *

* * * *Provided*, Miners in any organized mining district may make rules and regulations governing the recording of notices of location of mining claims, water rights, flumes and ditches, mill sites and affidavits of labor, not in conflict with this act or the general laws of the United States; and nothing in this act shall be construed so as to prevent the miners in any regularly organized mining district not within any recording district established by the court from electing their own mining recorder to act as such until a recorder therefor is appointed by the court: *Provided further*, All records heretofore regularly made by the United States commissioner at Dyea, Skagway, and the recorder at Douglas City, not in conflict with any records regularly made with the United States commissioner at Juneau, are hereby legalized. And all records heretofore made in good faith in any regularly organized mining district are hereby made public records, and the same shall be delivered to the recorder for the recording district including such mining district within six months from the passage of this act.

What recorded.

Act of Congress approved June 6, 1900 (31 Stat. L., 321, 326, 330).

Proviso.
Mining claims.

Where instruments recorded.

Proviso.
Miners' regulations for recording, etc.—recorder.

Records at Dyea, etc., legalized.

Mining laws. SEC. 26. The laws of the United States relating to mining claims, mineral locations, and rights incident thereto are hereby extended to the district of Alaska: *Provided*, That subject only to such general limitations as may be necessary to exempt navigation from artificial obstructions all land and shoal water between low and mean high tide on the shores, bays, and inlets of Bering Sea, within the jurisdiction of the United States, shall be subject to exploration and mining for gold and other precious metals by citizens of the United States, or persons who have legally declared their intentions to become such, under such reasonable rules and regulations as the miners in organized mining districts may have heretofore made or may hereafter make governing the temporary possession thereof for exploration and mining purposes until otherwise provided by law: *Provided further*, That the rules and regulations established by the miners shall not be in conflict with the mining laws of the United States; and no exclusive permits shall be granted by the Secretary of War authorizing any person or persons, corporation, or company to excavate or mine under any of said waters below low tide, and if such exclusive permit has been granted it is hereby revoked and declared null and void; but citizens of the United States or persons who have legally declared their intention to become such shall have the right to dredge and mine for gold or other precious metals in said waters, below low tide, subject to such general rules and regulations as the Secretary of War may prescribe for the preservation of order and the protection of the interests of commerce; such rules and regulations shall not, however, deprive miners on the beach of the right hereby given to dump tailings into or pump from the sea opposite their claims, except where such dumping would actually obstruct navigation; and the reservation of a roadway sixty feet wide, under the tenth section of the act of May fourteenth, eighteen hundred and ninety-eight, entitled "An act extending the homestead laws and providing for right of way for railroads in the district of Alaska, and for other purposes," shall not apply to mineral lands or town sites.

Provisos.
Gold, etc. Ex-
plorations on
Bering Sea.

—miners' regulations.

—not to conflict with Federal laws.

Exclude permits to mine void, etc.

Provision respecting roadway, etc., not to apply. Vol. 30, p. 413.

Act of Congress approved June 6, 1900 (31 Stat. L., 672, 676, 680).

AN ACT To ratify an agreement with the Indians of the Fort Hall Indian Reservation in Idaho, and making appropriations to carry the same into effect.

SEC. 5. That on the completion of the allotments and the preparation of the schedule provided for in the preceding section, and the classification of the lands as provided for herein, the residue of said ceded lands shall be opened to settlement by the proclamation of the President, and shall be subject to disposal under the homestead, town site, stone and timber, and mining laws of the United States only, excepting as to price and excepting the sixteenth and thirty-sixth sections in each congressional

(32 Stat. L., 1997.)

township, which shall be reserved for common-school purposes and be subject to the laws of Idaho, etc. * * *

And provided further, That all of said lands within five miles of the boundary line of the town of Pocatello shall be sold at public auction, payable as aforesaid, under the direction of the Secretary of the Interior for not less than ten dollars per acre: *And provided further*, That any mineral lands within said five-mile limit shall be disposed of under the mineral-land laws of the United States, excepting that the price of such mineral lands shall be fixed at ten dollars per acre instead of the price fixed by the said mineral-land laws.

See also act of Congress approved Mar. 30, 1904 (33 Stat. L., 153).

[DISPOSITION OF COMANCHE, KIOWA, AND APACHE LANDS.]

* * * * *

SEC. 6. That should any of said lands allotted to said Indians or opened to settlement under this act contain valuable mineral deposits, such mineral deposits shall be open to location and entry, under the existing mining laws of the United States, upon the passage of this act, and the mineral laws of the United States are hereby extended over said lands.

Act of Congress approved June 6, 1900 (31 Stat. L., 680).

* * * * *

AN ACT Extending the mining laws to saline lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all unoccupied public lands of the United States containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, are hereby declared to be subject to location and purchase under the provisions of the law relating to placer-mining claims: *Provided*, That the same person shall not locate or enter more than one claim hereunder.

Mining laws extended to saline lands.

Act of Congress approved Jan. 31, 1901 (31 Stat. L., 745).

AN ACT Making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

That the Secretary of the Interior, with the consent thereto of the majority of the adult male Indians of the Uintah and the White River tribes of Ute Indians, to be ascertained as soon as practicable by an inspector, shall cause to be allotted to each head of a family eighty acres of agricultural land which can be irrigated and forty acres of such land to each other member of said tribes, said allotments to be made prior to October first, nine-

Uintah and White River Utes.
Allotment of irrigable land.

Unallotted lands restored to public domain. *Providos.* Homestead entries. Mineral leases. Raven Mining Company. Application of proceeds from sales. Act of Congress approved May 27, 1902 (32 Stat. L., 263).

teen hundred and three, on which date all the unallotted lands within said reservation shall be restored to the public domain: *Provided*, That persons entering any of said land under the homestead law shall pay therefor at the rate of one dollar and twenty-five cents per acre: *And provided further*, That nothing herein contained shall impair the rights of any mineral lease which has been approved by the Secretary of the Interior, or any permit heretofore issued by direction of the Secretary of the Interior to negotiate with said Indians for a mineral lease; but any person or company having so obtained such approved mineral lease or such permit to negotiate with said Indians for a mineral lease on said reservation, pending such time and up to thirty days before said lands are restored to the public domain as aforesaid, shall have in lieu of such lease or permit the preferential right to locate under the mining laws not to exceed six hundred and forty acres of contiguous mineral land, except the Raven Mining Company, which may in lieu of its lease locate one hundred mining claims of the character of mineral mentioned in its lease; and the proceeds of the sale of the lands so restored to the public domain shall be applied, first, to the reimbursement of the United States for any moneys advanced to said Indians to carry into effect the foregoing provisions; and the remainder, under the direction of the Secretary of the Interior, shall be used for the benefit of said Indians.

* * * * *

Assessment required for oil mining claims. AN ACT Defining what shall constitute and providing for assessments on oil mining claims.

Act of Congress approved Feb. 12, 1903 (32 Stat. L., 825). *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That where oil lands are located under the provisions of title thirty-two, chapter six, Revised Statutes of the United States, as placer mining claims, the annual assessment labor upon such claims may be done upon any one of a group of claims lying contiguous and owned by the same person or corporation, not exceeding five claims in all: *Provided*, That said labor will tend to the development or to determine the oil-bearing character of such contiguous claims.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

Uncompahgre Indian Reservation. That in the lands within the former Uncompahgre Indian Reservation, in the State of Utah, containing gilson-

ite, asphaltum, elaterite, or other like substances, which were reserved from location and entry by provision in the act of Congress entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes, for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," approved June seventh, eighteen hundred and ninety-seven, all discoveries and locations of any such mineral lands by qualified persons prior to January first, eighteen hundred and ninety-one, not previously discovered and located, who recorded notices of such discoveries and locations prior to January first, eighteen hundred and ninety-one, either in the State of Colorado, or in the office of the county recorder of Uintah County, Utah, shall have all the force and effect accorded by law to locations of mining claims upon the public domain. All such locations may hereafter be perfected, and patents shall be issued therefor upon compliance with the requirements of the mineral-land laws, provided that the owners of such locations shall relocate their respective claims and record the same in the office of the county recorder of Uintah County, Utah, within ninety days after the passage of this act. All locations of any such mineral lands made and recorded on or subsequent to January first, eighteen hundred and ninety-one, are hereby declared to be null and void; and the remainder of the lands heretofore reserved as aforesaid because of the mineral substances contained in them, in so far as the same may be within even-numbered sections, shall be sold and disposed of in tracts not exceeding forty acres, or a quarter of a quarter of a section, in such manner and upon such terms and with such restrictions as may be prescribed in a proclamation of the President of the United States issued for that purpose not less than one hundred and twenty days after the passage of this act, and not less than ninety days before the time of sale or disposal, and the balance of said lands and also all the mineral therein are hereby specifically reserved for future action of Congress.

Mining claims located on prior to Jan. 1, 1891, valid.

30 Stat., p. 87.

Patents to issue on relocations, etc., of claims.

Claims located after Jan. 1, 1891, invalid.

Sale of remainder of mineral lands.

Restrictions.

Act of Congress approved Mar. 3, 1903 (32 Stat. L., 998).

AN ACT For the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment.

Sec. 5. That said commissioners shall then proceed to personally inspect and classify and appraise, by the smallest legal subdivisions of forty acres each, all of the remaining lands embraced within said reservation. In making such classification and appraisal said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, timber lands, the same to be

Classification, etc., of lands.

lands more valuable for their timber than for any other purpose; fourth, mineral lands; and fifth, grazing lands.

Disposal of
lands.

Timber and
school lands
excepted.

* * * * *

SEC. 8. That when said commission shall have completed the classification and appraisalment of all of said lands and the same shall have been approved by the Secretary of the Interior, the land shall be disposed of under the provisions of the homestead, mineral, and town-site laws of the United States, except such of said lands as shall have been classified as timber lands, and excepting sections sixteen and thirty-six of each township, which are hereby granted to the State of Montana for school purposes. * * *

Mineral land
entries.

Proviso.
Exceptions.
Act of Con-
gress approved
Apr. 23, 1904
(33 Stat. L.
302).

* * * * *

SEC. 10. That only mineral entry may be made on such of said lands as said commission shall designate and classify as mineral under the general provisions of the mining laws of the United States, and mineral entry may also be made on any of said lands whether designated by said commission as mineral lands or otherwise, such classification by said commission being only prima facie evidence of the mineral or nonmineral character of the same: *Provided*, That no such mineral locations shall be permitted upon any lands allotted in severalty to an Indian.

AN ACT To ratify and amend an agreement with the Indians of the Crow Reservation, in Montana, and making appropriations to carry the same into effect.

Town-site
and mineral
lands.
Act of Con-
gress approved
Apr. 27, 1904
(33 Stat. L.
352).

* * * * *

SEC. 5. * * * *And provided further*, That the price of said lands shall be four dollars per acre, when entered under the homestead laws. * * * Lands entered under the town-site and mineral land laws shall be paid for in amount and manner as provided by said laws, but in no event at a less price than that fixed herein for such lands, if entered under the homestead laws. * * *

AN ACT To authorize the sale and disposition of surplus or unallotted lands of the Yakima Indian Reservation, in the State of Washington.

Appraisal of
unallotted
lands, etc.

* * * * *

SEC. 3. That the residue of the lands of said reservation—that is, the lands not allotted and not reserved—shall be classified under the direction of the Secretary of the Interior as irrigable lands, grazing lands, timber lands, or arid lands, and shall be appraised under their appropriate classes by legal subdivisions, with the exception of the mineral lands, which need not be appraised, and the timber on the lands classified as timber lands shall be appraised separately from the land. The basis for the appraisal of the timber shall be the amount of

standing merchantable timber thereon, which shall be ascertained and reported.

* * * * *

The lands classified as mineral lands shall be subject to location and disposal under the mineral-land laws of the United States: *Provided*, That lands not classified as mineral may also be located and entered as mineral lands, subject to approval by the Secretary of the Interior and conditioned upon the payment, within one year from the date when located, of the appraised value of the lands per acre fixed prior to the date of such location, but at not less than the price fixed by existing law for mineral lands: *Provided further*, That no such mineral locations shall be permitted on any lands allotted to Indians in severalty or reserved for any purpose as herein authorized.

Mineral lands.

Provided.
Lands not classified as mineral lands.

Restriction.

Act of Congress approved Dec. 21, 1904 (33 Stat. L., 595).

AN ACT To ratify and amend an agreement with the Indians residing on the Shoshone or Wind River Indian Reservation in the State of Wyoming and to make appropriations for carrying the same into effect.

* * * * *

SEC. 2. That the lands ceded to the United States under the said agreement shall be disposed of under the provisions of the homestead, town-site, coal, and mineral land laws of the United States and shall be opened to settlement and entry by proclamation of the President. * * *

Opening of lands to entry.

Proclamation.

* * * * *

* * * Lands entered under the town-site, coal, and mineral land laws shall be paid for in amount and manner as provided by said laws. Notice of location of all mineral entries shall be filed in the local land office of the district in which the lands covered by the location are situated, and unless entry and payment shall be made within three years from the date of location all rights thereunder shall cease; * * * that all lands, except mineral and coal lands, herein ceded remaining undisposed of at the expiration of five years from the opening of said lands to entry shall be sold to the highest bidder for cash at not less than one dollar per acre under rules and regulations to be prescribed by the Secretary of the Interior. * * *

Town-site, coal, and mineral entries.

Act of Congress approved Mar. 3, 1905 (33 Stat. L., 1016).

AN ACT To authorize the sale and disposition of surplus or unallotted lands of the diminished Colville Indian Reservation, in the State of Washington, and for other purposes.

* * * * *

SEC. 3. That upon the completion of said allotments to said Indians the residue or surplus lands—that is, lands not allotted or reserved for Indian school, agency, or other purposes—of the said diminished Colville Indian Reservation shall be classified under the direction of the

Mineral lands.

Act of Congress approved Mar. 22, 1906.

- Secretary of the Interior as irrigable lands, grazing lands, timber lands, mineral lands, or arid lands, and shall be appraised under their appropriate classes by legal subdivisions, with the exception of the lands classed as mineral lands, which need not be appraised, and which shall be disposed of under the general mining laws of the United States.

AN ACT Making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven.

[COEUR D'ALENE INDIAN LANDS.]

* * * * *

Mineral
lands.
Act of Con-
gress approved
June 21, 1906
(34 Stat. L.,
336).

Coal and oil
deposits re-
served.

Provided further, That the general mining laws of the United States shall extend after the approval of this act to any of said lands, and mineral entry may be made on any of said lands, but no such mineral selection shall be permitted upon any lands allotted in severalty to the Indians: *Provided further,* That all the coal or oil deposits in or under the lands on the said reservation shall be and remain the property of the United States, and no patent that may be issued under the provisions of this or any other act of Congress shall convey any title thereto. * * *

Act of Con-
gress approved
Mar. 2, 1907
(35 Stat. L.,
1243).

Alaska.
Annual im-
provements,
etc., required
on mining
claims.

AN ACT To amend the laws governing labor or improvements upon mining claims in Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That during each year and until patent has been issued therefor, at least one hundred dollars' worth of labor shall be performed or improvements made on, or for the benefit or development of, in accordance with existing law, each mining claim in the district of Alaska heretofore or hereafter located. And the locator or owner of such claim or some other person having knowledge of the facts may also make and file with the said recorder of the district in which the claims shall be situate an affidavit showing the performance of labor or making of improvements to the amount of one hundred dollars as aforesaid and specifying the character and extent of such work. Such affidavit shall set forth the following: First, the name or number of the mining claims and where situated; second, the number of days' work done and the character and value of the improvements placed thereon; third, the date of the performance of such labor and of making improvements; fourth, at whose instance the work was done or the improvements made; fifth, the actual amount paid for work and improvement, and by whom paid when the same was not done by the owner. Such affidavit shall be prima facie evidence of the performance of such work or making of such improvements, but if such affidavits be not filed within the time fixed by

Filing aff-
davits.

Contents.

Prima facie
evidence of
performance of
work, etc.

this act the burden of proof shall be upon the claimant to establish the performance of such annual work and improvements. And upon failure of the locator or owner of any such claim to comply with the provisions of this act, as to performance of work and improvements, such claim shall become forfeited and open to location by others as if no location of the same had ever been made.

Forfeiture.

The affidavits required hereby may be made before any officer authorized to administer oaths, and the provisions of sections fifty-three hundred and ninety-two and fifty-three hundred and ninety-three of the Revised Statutes are hereby extended to such affidavits. Said affidavits shall be filed not later than ninety days after the close of the year in which such work is performed.

Officer before whom affidavits may be made.

R. S., secs. 5392, 5393, p. 1045.

Time of filing.

Fee.

SEC. 2. That the recorders for the several divisions or districts of Alaska shall collect the sum of one dollar and fifty cents as a fee for the filing, recording, and indexing said annual proofs of work and improvements for each claim so recorded.

AN ACT Authorizing a resurvey of certain townships in the State of Wyoming, and for other purposes.

[BITTER ROOT VALLEY, MONTANA.]

SEC. 11. That all the provisions of the mining laws of the United States are hereby extended and made applicable to the undisposed-of lands in the Bitter Root Valley, State of Montana, above the mouth of the Lo Lo Fork of the Bitter Root River, designated in the act of June fifth, eighteen hundred and seventy-two: *Provided*, That all mining locations and entries heretofore made or attempted to be made upon said lands shall be determined by the Department of the Interior as if said lands had been subject to mineral location and entry at the time such locations and entries were made or attempted to be made: *And provided further*, That this act shall not be applicable to lands withdrawn for administration sites for use of the Forest Service.

Mining laws extended to lands.

Act of Congress approved May 29, 1908 (35 Stat. L., 467).

AN ACT For relief of applicants for mineral surveys.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of the moneys heretofore or hereafter covered into the Treasury from deposits made by individuals to cover cost of work performed and to be performed in the offices of the United States surveyors general in connection with the survey of mineral lands, any excess in the amount deposited over and above the actual cost of the work performed, including all expenses incident thereto for which the deposits were severally made or the whole of any unused deposit; and such sums, as the several cases may be, shall be deemed to be annually and permanently appropriated for

Repayment of deposits for mineral surveys.

Act of Congress approved Feb. 24, 1909 (35 Stat. L., 645).

that purpose. Such repayments shall be made to the person or persons who made the several deposits, or to his or their legal representatives, after the completion or abandonment of the work for which the deposits were made, and upon an account certified by the surveyor general of the district in which the mineral land surveyed, or sought to be surveyed, is situated and approved by the Commissioner of the General Land Office.

AN ACT Extending the time for final entry of mineral claims within the Shoshone or Wind River Reservation in Wyoming.

Time extended for making entry.
Act of Congress approved Feb. 25, 1909 (35 Stat. L., 650).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section two of chapter fourteen hundred and fifty-two of the Statutes of the Fifty-eighth Congress (United States Statutes at Large, volume thirty-three, part one), being "An act to ratify and amend an agreement with the Indians residing on the Shoshone or Wind River Indian Reservation, in the State of Wyoming, and to make appropriations to carry the same into effect," be, and the same is hereby, amended so that all claimants and locators of mineral lands within the ceded portion of said reservation shall have five years from the date of location within which to make entry and payment instead of three years, as now provided by the said act.

AN ACT Extending the time in which to file adverse claims and institute adverse suits against mineral entries in the District of Alaska.

Time extended for filing adverse mineral claims, etc., in Alaska.
(R. S., secs. 2325, 2326, pp. 426, 427.)
Act of Congress approved June 7, 1910 (36 Stat. L., 459).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the District of Alaska adverse claims authorized and provided for in sections twenty-three hundred and twenty-five and twenty-three hundred and twenty-six, United States Revised Statutes, may be filed at any time during the sixty days' period of publication or within eight months thereafter, and the adverse suits authorized and provided for in section twenty-three hundred and twenty-six, United States Revised Statutes, may be instituted at any time within sixty days after the filing of said claims in the local land office.

AN ACT To authorize the President of the United States to make withdrawals of public lands in certain cases.

Temporary withdrawals by President for power sites, irrigation, etc., authorized.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including the District of Alaska, and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reserva-

tions shall remain in force until revoked by him or by an act of Congress.

SEC. 2.¹ That all lands withdrawn under the provisions of this act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to minerals other than coal, oil, gas, and phosphates: *Provided*, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work: *And provided further*, That this act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this act: *And provided further*, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: *And provided further*, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by act of Congress.

SEC. 3. That the Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals.

AN ACT To protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in no case shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any qualified persons or person, or corporation, prior to discovery of oil or gas therein, but if such claim is in all

Mining
rights contin-
ued.

Exceptions.

Provisos.

Rights of
bona fide oil or
gas claimants.

Status of
prior claims.

Homestead,
etc., settle-
ments excepted.

Restriction
on new forest
reserves.

Report of
withdrawals to
Congress.

Act of Con-
gress approved
June 25, 1910
(36 Stat. L.,
847).

Locators of
mineral oil
lands.

Patents not
to be denied,
solely for trans-
fer before dis-
covery, etc.

¹ Sec. 2 amended by act of Aug. 24, 1912, to permit exploration, location, and purchase of lands containing metalliferous minerals only. See pp. 32, 33.

Proviso.
Condition.
Act of Con-
gress approved
Mar. 2, 1911
(36 Stat. L.,
1015).

other respects valid and regular, patent therefor not exceeding one hundred and sixty acres in any one claim shall issue to the holder or holders thereof, as in other cases: *Provided, however,* That such lands were not at the time of inception of development on or under such claim withdrawn from mineral entry.¹

AN ACT To modify and amend the mining laws in their application to the Territory of Alaska, and for other purposes.

Alaska.

Association
placer-mining
claims limited.
Assessment
required.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no association placer-mining claim shall hereafter be located in Alaska in excess of forty acres, and on every placer-mining claim hereafter located in Alaska, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year, including the year of location, for each and every twenty acres or excess fraction thereof.

Location by
attorneys.

Restriction.

SEC. 2. That no person shall hereafter locate any placer-mining claim in Alaska as attorney for another unless he is duly authorized thereto by a power of attorney in writing, duly acknowledged and recorded in any recorder's office in the judicial division where the location is made. Any person so authorized may locate placer-mining claims for not more than two individuals or one association under such power of attorney, but no such agent or attorney shall be authorized or permitted to locate more than two placer-mining claims for any one principal or association during any calendar month, and no placer-mining claim shall hereafter be located in Alaska except under the limitations of this act.

Number of
locations limit-
ed.

Proviso.
Ownership.

SEC. 3. That no person shall hereafter locate, cause or procure to be located, for himself more than two placer-mining claims in any calendar month: *Provided,* That one or both of such locations may be included in an association claim.

Area of
claims.

SEC. 4. That no placer-mining claim hereafter located in Alaska shall be patented which shall contain a greater area than is fixed by law, nor which is longer than three times its greatest width.

Effect of vio-
lations.

Act of Con-
gress approved
Aug. 1, 1912
(37 Stat. L.,
242, 243).

SEC. 5. That any placer-mining claim attempted to be located in violation of this act shall be null and void, and the whole area thereof may be located by any qualified locator as if no such prior attempt had been made.

Withdrawals
for specified
purposes.
Vol. 36, p.
847.

AN ACT To amend section two of an act to authorize the President of the United States to make withdrawals of public lands in certain cases, approved June twenty-fifth, nineteen hundred and ten.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section two of the act of Congress approved

¹ Act amended by act of Aug. 25, 1914 (38 Stat. L., 708), by adding another section thereto, permitting agreements with Government for working certain oil or gas lands prior to issue of patents. (See pp. 35, 36.)

June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page eight hundred and forty-seven), be, and the same hereby is, amended to read as follows:

"SEC. 2. That all lands withdrawn under the provisions of this act shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals: *Provided*, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands and who, at such date, is in the diligent prosecution of work leading to the discovery of oil or gas, shall not be affected or impaired by such order so long as such occupant or claimant shall continue in diligent prosecution of said work: *Provided further*, That this act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to June twenty-fifth, nineteen hundred and ten: *And provided further*, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: *And provided further*, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of California, Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by act of Congress."

Mining rights continued.

Provisos.
Rights of bona fide oil or gas claimants.

Status of prior claims.

Homestead, etc., entries not affected.

Creation of forest reserves restricted.
Vol. 34, p. 1271.

Act of Congress approved Aug. 24, 1912 (37 Stat. L., 497).

AN ACT To amend section twenty-three hundred and twenty-four of the Revised Statutes of the United States relating to mining claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provision of section twenty-three hundred and twenty-four of the Revised Statutes of the United States, which requires that on each claim located after the tenth day of May, eighteen hundred and seventy-two, and until patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year, be suspended for the year nineteen hundred and thirteen as to mining claims situated on Seward Peninsular, in the district or Territory of Alaska west of longitude one hundred and fifty-eight west and north of latitude sixty-four, so that no mining claim which has been regularly located and recorded as

Alaska.
Assessment work on mining claims, Seward Peninsula, remitted for 1913.
(R. S., sec. 2324, p. 426.)

Proviso.
Notice re-
quired.

Limited to
specified area.

Act of Con-
gress approved
Dec. 1, 1913
(38 Stat. L.,
235).

required by the local laws and mining regulations within such area so described shall be subject to forfeiture for nonperformance of the annual assessment for the year nineteen hundred and thirteen: *Provided*, That the claimant or claimants of any mining location in order to secure the benefits of this Act shall cause to be recorded in the office where the location notice and certificate is filed on or before December thirty-first, nineteen hundred and thirteen, a notice that he, she, or they in good faith intend to hold or work said claim: *And provided further*, That this amendment shall in no way annul, modify, or repeal said section as to any mining claims, either in the district of Alaska or elsewhere, except those said mining claims within the area herein particularly described.

AN ACT To provide for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals.

Entry of
classified non-
metallic min-
eral lands for
agriculture, etc.

Mining re-
served.

Desert en-
tries.

Proviso.
Condition in
application.

Issue of con-
ditional pa-
tent.

Bond for
prospecting.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits, shall be subject to appropriation, location, selection, entry, or purchase, if otherwise available, under the nonmineral land laws of the United States, whenever such location, selection, entry, or purchase shall be made with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same; but no desert entry made under the provisions of this act shall contain more than one hundred and sixty acres: *Provided*, That all applications to locate, select, enter, or purchase under this section shall state that the same are made in accordance with and subject to the provisions and reservations of this act.

SEC. 2. That upon satisfactory proof of full compliance with the provisions of the laws under which the location, selection, entry, or purchase is made, the locator, selector, entryman, or purchaser shall be entitled to a patent to the land located, selected, entered, or purchased, which patent shall contain a reservation to the United States of the deposits on account of which the lands so patented were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same, such deposits to be subject to disposal by the United States only as shall be hereafter expressly directed by law. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the pay-

ment of all damages to the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the minerals therefrom, and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages: *Provided*, That nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, select, enter, or purchase, under the land laws of the United States, lands which have been withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic mineral lands, with a view of disproving such classification and securing patent without reservation, nor shall persons who have located, selected, entered, or purchased lands subsequently withdrawn, or classified as valuable for said mineral deposits, be debarred from the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands entered, selected, or located are in fact nonmineral in character.

Mining entries permitted.

Proviso.
Application to disprove mineral classification.

For subsequent withdrawals.

SEC. 3. That any person who has, in good faith, located, selected, entered, or purchased, or any person who shall hereafter locate, select, enter, or purchase, under the nonmineral land laws of the United States, any lands which are subsequently withdrawn, classified, or reported as being valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, may, upon application therefor, and making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which patent shall contain a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, together with the right to prospect for, mine, and remove the same.

Conditional nonmineral patents for lands subsequently withdrawn, etc.

Reservation for mining.

Act of Congress approved July 17, 1914 (38 Stat. L., 569).

AN ACT To amend an Act entitled "An Act to protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest," approved March second, nineteen hundred and eleven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An act to protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of

Locators of mineral oil and gas lands. (Vol. 36, p. 1015, amended.)

the United States, or their successors in interest," approved March second, nineteen hundred and eleven, be amended by adding thereto the following section:

Agreements
for working re-
served lands
prior to issue
of patents.

"Sec. 2. That where applications for patents have been or may hereafter be offered for any oil or gas land included in an order of withdrawal upon which oil or gas has heretofore been discovered, or is being produced, or upon which drilling operations were in actual progress on October third, nineteen hundred and ten, and oil or gas is thereafter discovered thereon, and where there has been no final determination by the Secretary of the Interior upon such applications for patent, said Secretary, in his discretion, may enter into agreements, under such conditions as he may prescribe with such applicants for patents in possession of such land or any portions thereof, relative to the disposition of the oil or gas produced therefrom or the proceeds thereof, pending final determination of the title thereto by the Secretary of the Interior, or such other disposition of the same as may be authorized by law. Any money which may accrue to the United States under the provisions of this act from lands within the Naval Petroleum Reserves shall be set aside for the needs of the Navy and deposited in the Treasury to the credit of a fund to be known as the Navy Petroleum Fund, which fund shall be applied to the needs of the Navy as Congress may from time to time direct, by appropriation or otherwise."

Disposal of
proceeds there-
under.

Lands in na-
val petroleum
reserves.

Disposal of
receipts.

Act of Con-
gress approved
Aug. 25, 1914
(38 Stat. L.,
708).

AN ACT Providing for the purchase and disposal of certain lands containing the minerals kaolin, kaolinite, fuller's earth, china clay, and ball clay, in Tripp County, formerly a part of the Rosebud Indian Reservation in South Dakota.

Public lands.
Entries al-
lowed for kao-
lin, etc., on
ceded lands of
Rosebud Indian
Reservation, S.
Dak.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all lands containing the minerals kaolin, kaolinite, fuller's earth, china clay, and ball clay, in Tripp County in what was formerly within the Rosebud Indian Reservation in South Dakota, as have heretofore been opened to settlement and entry under acts of Congress which did not authorize the disposal of such mineral lands, shall be open to exploration and purchase and be disposed of under the general provisions of the mining laws of the United States, and the proceeds arising therefrom shall be deposited in the Treasury for the same purpose for which the proceeds arising from the disposal of other lands within the reservation in which such mineral-bearing lands are located were deposited: *Provided*, That the same person, association, or corporation shall not locate or enter more than one claim, not exceeding one hundred and sixty acres in area, hereunder: *Provided further*, That none of the lands or mineral deposits, the disposal of which is herein provided for, shall be disposed of at less

Provisos.
Area restric-
tion.

Minimum
price.

price than that fixed by the applicable mining or coal-land laws, and in no instance at less than their appraised value, to be determined by the Secretary of the Interior.

Act of Congress approved Jan. 11, 1915 (38 Stat. L., 792).

AN ACT Validating locations of deposits of phosphate rock heretofore made in good faith under the placer-mining laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where public lands containing deposits of phosphate rock have heretofore been located in good faith under the placer-mining laws of the United States and upon which assessment work has been annually performed, such locations shall be valid and may be perfected under the provisions of said placer-mining laws, and patents, whether heretofore or hereafter issued thereon, shall give title to and possession of such deposits: *Provided*, That this act shall not apply to any locations made subsequent to the withdrawal of such lands from location, nor shall it apply to lands included in an adverse or conflicting lode location unless such adverse or conflicting location is abandoned.

Public lands. Placer locations for phosphate rock validated.

Proviso. Application restricted.

Act of Congress approved Jan. 11, 1915 (38 Stat. L., 792).

SPECIAL ACTS.

The act of March 2, 1907 (34 Stat. L., 1232), section 4, provides that the surveyor general of Alaska, under the direction of the Secretary of the Interior, shall furnish receivers a sufficient quantity of numbers to be used in the different classes of official surveys that may be made in the Nome and Fairbanks land districts to meet the requirements thereof, authorizes receivers to furnish numbers for official surveys and an order directing surveyor to make same, such application order and the fee required to be paid to the surveyor general shall be transmitted to the surveyor general, and provides that all surveys thus made shall be approved by the surveyor general as at present.

The act of May 27, 1908 (35 Stat., 317, 365), prohibited mining locations thereafter within the Mount Rainier National Park, but prior valid existent claims were not affected.

Sections 7, 8, and 12, of the act of May 30, 1908 (35 Stat., 558), provides for the extension of the mineral land laws to the classified surplus lands of the Fort Peck Indian Reservation, in the State of Montana.

The act of May 11, 1910 (36 Stat., 354), provides for the establishment of the Glacier National Park, in Montana, and reserves and withdraws from occupancy or disposal under any of the land laws of the United States the lands therein, but protects valid existing claims and locations.

The act of June 7, 1910 (36 Stat., 459), provides for the granting of public lands to certain cities and towns in the State of Colorado for public park purposes and reserves to the United States the oil, coal, and other mineral deposits in such lands.

The act of June 25, 1910 (36 Stat., 848), contains provisions for the establishment and enforcement of miners' labor liens in the Territory of Alaska.

The act of September 30, 1913 (38 Stat. L., 113), authorizes the President to provide a method for opening public lands restored from reservations, etc.

REGULATIONS.

NATURE AND EXTENT OF MINING CLAIMS.

1. Mining claims are of two distinct classes: Lode claims and placers.

Lode Claims.

2. The status of lode claims located or patented previous to the 10th day of May, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by sections 2322 and 2328, by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

3. It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes, or ledges, *other* than the one named in the original location, to such as were not *adversely claimed on May 10, 1872*, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the provisions of the Revised Statutes.

4. From and after the 10th May, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of *fifteen hundred linear feet* along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of *fifteen hundred feet*, but in no event can a location of a vein or lode made after the 10th day of May, 1872, exceed fifteen hundred feet along the course thereof, whatever may be the number of persons composing the association.

5. With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the Revised Statutes provide that the lateral extent of locations of veins or lodes made after May 10, 1872, shall in no case *exceed three hundred feet on each side of the middle of the vein at the surface*, and that no such surface rights shall be limited by any mining regulations to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th May, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements can not extend beyond three hundred feet on *either* side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet can not be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration *where* the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

6. By the foregoing it will be perceived that no lode claim located after the 10th May, 1872, can exceed a parallelogram fifteen hundred feet in length by six hundred feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts; and that no such local regulations or State or Territorial laws shall limit a vein or lode claim to less than fifteen hundred feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than fifty feet in width unless adverse claims existing on the 10th day of May, 1872, render such lateral limitation necessary.

7. Locators can not exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a *description of the claim or claims* located, by reference to some natural object or permanent monument, as will identify the claim.

8. No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of *bona fide* prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

9. The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface. His location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the *locus* of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

10. In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of fifteen hundred feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point.

11. The location notice must be filed for record in all respects as required by the State or Territorial laws and local rules and regulations, if there be any.

12. In order to hold the possessory title to a mining claim located prior to May 10, 1872, the law requires that *ten dollars* shall be expended annually in labor or improvements for each *one hundred feet* in length along the vein or lode. In order to hold the possessory right to a location made since May 10, 1872, not less than one hundred dollars' worth of labor must be performed or improvements made thereon annually. Under the provisions of the act of Congress approved January 22, 1880, the first annual expenditure becomes due and must be performed during the calendar year succeeding that in which the location was made. Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims, may be made upon any one claim. Cornering locations are held not to be contiguous.

13. Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation, unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

14. Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

15. Upon the failure of any one of several coowners to contribute his proportion of the required expenditures, the coowners, who have performed the labor or made the improvements as required, may, at the expiration of the year, give such delinquent coowner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for ninety days; and if upon the expiration of ninety days after such notice in writing, or upon the expiration of one hundred and eighty days after the first newspaper publication of notice, the delinquent coowner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his coowners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the sworn statement of the publisher as to the facts of publication, giving dates, and a printed copy of the notice published, should be furnished, and the claimant must swear that the delinquent coowner failed to contribute his proper proportion within the period fixed by the statute.

TUNNELS.

16. The effect of section 2323, Revised Statutes, is to give the proprietors of a mining tunnel run in good faith the possessory right to fifteen hundred feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist, within three thousand feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on

the *line thereof* and within said distance of three thousand feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the three thousand feet are to be counted upon which prospecting is prohibited as aforesaid.

17. To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the three thousand feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

18. A full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is *bona fide* their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

Placer Claims.

19. But one discovery of mineral is required to support a placer location, whether it be of twenty acres by an individual, or of one hundred and sixty acres or less by an association of persons.

20. The act of August 4, 1892, extends the mineral-land laws so as to bring lands chiefly valuable for building stone within the provisions of said law by authorizing a placer entry of such lands. Registers and receivers should make a reference to said act on the entry papers in the case of all placer entries made for lands containing stone chiefly valuable for building purposes. Lands reserved for the benefit of public schools or donated to any State are not subject to entry under said act.

21. The act of February 11, 1897, provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder.

22. Upon the presentation of every case within the purview of the act of March 2, 1911 (36 Stat. L., 1015), the local officers must advise the chiefs of field division, in order that the latter may make such field examinations as are advisable or necessary, particularly if the land involved has been embraced in a withdrawal, as to the time when the development work was begun, and be prepared to submit the results, if possible, before entry is allowed. Each such case will be considered and adjudicated upon its record in the regular manner.

Observing that the operation of the act is retrospective only, being confined to locations made prior to the date thereof, you will, upon the presentation of any application for patent affected by the provisions of said act, immediately communicate to the proper chief of field division due and full information thereof, to the end that he may procure to be made such investigations as may be necessary to ascertain the facts concerning the inception and subsequent prosecution of development operations, the extent and character of such works, and any other facts bearing upon and affecting the validity of the claim, including the continuousness and diligence with which development proceeded from the date of inception.

Report made of the results of such examinations will be submitted to this office, upon receipt of which the local officers will be advised as to the action to be taken. (Instructions, May 17, 1911, approved, July 11, 1912.)

23. By section 2330 authority is given for subdividing forty-acre legal subdivisions into ten-acre tracts. These ten-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such ten-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

24. A ten-acre subdivision may be described, for instance if situated in the extreme northeast of the section, as the "NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ " of the section, or, in like manner, by appropriate terms, wherever situated; but, in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

25. The proof of improvements must show their value to be not less than *five hundred dollars* and that they were made by the applicant for patent or his grantors. This proof should consist of the affidavit of two or more disinterested witnesses. The annual expenditure to the amount of \$100, required by section 2324, Revised Statutes, must be made upon placer as well as lode locations.

26. Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer location are owned by other parties, the

fact should be distinctly stated in the application for patent and in all the notices. But in all cases, whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the affidavit of two or more witnesses.

27. By section 2330 it is declared that no location of a placer claim made after July 9, 1870, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys.

28. Section 2331 provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than twenty acres for each individual claimant.

29. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer claim can be made to exceed one hundred and sixty acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed twenty acres for each individual participating therein; that is, a location by two persons can not exceed forty acres, and one by three persons can not exceed sixty acres.

30. The regulations hereinbefore given as to the manner of marking locations on the ground, and placing the same on record, must be observed in the case of placer locations so far as the same are applicable, the law requiring, however, that all placer-mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

Conformity to the public land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

Where a placer location by one or two persons can be entirely included within a square forty-acre tract, by three or four persons within two square forty-acre tracts placed end to end, by five or six persons within three square forty-acre tracts, and by seven or eight persons within four square forty-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

Whether a placer location conforms reasonably with the legal subdivisions of the public surveys is a question of fact to be determined in each case, and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the Government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations

which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer, 37 L. D., 250.)

REGULATIONS UNDER SALINE ACT.

31. Under the act approved January 31, 1901, extending the mining laws to saline lands, the provisions of the law relating to placer-mining claims are extended to all States and the Territory of Alaska, so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso, "That the same person shall not locate or enter more than one claim hereunder."

32. Rights obtained by location under the placer-mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person holding as assignee may make entry in his own name: *Provided*, He has not held under this act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.

33. In order that the conditions imposed by the proviso, as set forth in the above paragraph, may duly appear, the application for patent must contain or be accompanied by a specific statement under oath by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this act. The application for patent should also be accompanied by a showing under oath, fully disclosing the qualifications as defined by the proviso, of the applicants' predecessors in interest. (As amended June 4, 1912.)

PROCEDURE TO OBTAIN PATENT TO MINERAL LANDS.

Lode Claims.

34. The claimant is required, in the first place, to have a correct survey of his claim made under authority of the surveyor general of the State or Territory in which the claim lies, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Four plats and one copy of the original field notes in each case will be prepared by the surveyor general; one plat and the original field notes to be retained in the office of the surveyor general; one copy of the plat to be given the claimant for posting upon the claim; one plat and a copy of the field notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor general to the register of the proper land district, to be retained on his files for future reference. As there is no resident surveyor general for the State of Arkansas, applications for the survey of mineral claims in said State should be made to the Commissioner of this office, who, under the law, is *ex officio* the United States surveyor general.

The surveyor general will prepare the original plat on Form 4-675. All lines clear and sharp in black. All letters and figures clear and sharp in black.

The original plat, so prepared, will be signed and dated by the surveyor general and forwarded to the General Land Office flat or in tube and unmounted.

As to plats of survey of mining claims outside of the Territory of Alaska, the Commissioner will have three photolithographic copies made upon drawing paper, which copies, with the original plat, will be forwarded to the surveyor general, the duplicate, triplicate, and quadruplicate to be signed by him, and the four plats to be filed and disposed of in the same manner as provided in paragraph 34 of the Mining Regulations, viz: One plat and the original field notes to be retained in the office of the surveyor general; one copy of the plat to be given the claimant for posting upon the claim; one plat and a copy of the field notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor general to the register of the proper land district, to be retained on his files for future reference.

As to plats of survey of mining claims in the Territory of Alaska, the Commissioner will have three photolithographic copies made upon drawing paper, two copies of which, with the original plat, will be forwarded to the surveyor general, the duplicate and triplicate to be signed by him, and the three plats to be filed and disposed of as follows: One plat and the original field notes to be retained in the office of the surveyor general; one plat and a copy of the field notes to be given the claimant, for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor general to the register of the proper land district to be retained in his files for future reference. The Commissioner will mail one photolithographic copy of the plat, made upon drawing paper, direct to the applicant for survey, or to his agent or attorney, when the application is made by agent or attorney, at his record address, to be used for posting on the land.

A certain number of photolithographic copies will be furnished the surveyor general for sale at a cost of 30 cents each, and a photolithographic copy printed on tracing paper will be furnished the surveyor general, from which blue prints may be made, to be sold at cost. (Instructions, July 29, 1911, as amended Oct. 8, 1912.)

35. The survey and plat of mineral claims required to be filed in the proper land office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or Territory or the regulations of the mining district require the notice of location to be recorded), and when the original location is made by survey of a United States mineral surveyor such location survey can not be substituted for that required by the statute, as above indicated.

36. The surveyors general should designate all surveyed mineral claims by a progressive series of numbers, beginning with survey No. 37, irrespective as to whether they are situated on surveyed or unsurveyed lands, the claim to be so designated at date of issuing the order

therefor, in addition to the local designation of the claim; it being required in all cases that the plat and field notes of the survey of a claim must, in addition to the reference to permanent objects in the neighborhood, describe the locus of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on unsurveyed lands at a distance of more than two miles from such public corner, in which latter case it should be connected with a United States mineral monument. Such connecting line must not be more than *two miles* in length, and should be measured on the ground direct between the points, or calculated from actually surveyed traverse lines if the nature of the country should not permit direct measurement. If a regularly established survey corner is within two miles of a claim situated on unsurveyed lands, the connection should be made with such corner in preference to a connection with a United States mineral monument. The connecting line or traverse line must be surveyed by the mineral surveyor at the time of his making the particular survey and be made a part thereof.

37. (a) Promptly upon the approval of a mineral survey the surveyor general will advise both this office and the appropriate local land office, by letter (Form 4-286), of the date of approval, number of the survey, name and area of the claim, name and survey number of each approved mineral survey with which actually in conflict, name and address of the applicant for survey, and name of the mineral surveyor who made the survey; and will also briefly describe therein the *locus* of the claim, specifying each legal subdivision or portion thereof, when upon surveyed lands, covered in whole or in part by the survey; but hereafter no segregation of any such claim upon the official township-survey records will be made until mineral entry has been made and approved for patent, unless otherwise directed by this office.

(b) Upon application to make agricultural entry of the residue of any original lot or legal subdivision of forty acres, reduced by mining claims for which patent applications have been filed and which residue has been already reallotted in accordance therewith, the local officers will accept and approve the application as usual, if found to be regular. When such an application is filed for any such original lot or subdivision, reduced in available area by duly asserted mining claims but not yet relotted accordingly, the local officers will promptly advise this office thereof; and will also report and identify any pending application for mineral patent affecting such subdivision which the agricultural applicant does not desire to contest. The surveyor general will thereupon be advised by this office of such mining claims, or portions thereof, as are proper to be segregated, and directed to prepare at once, upon the usual drawing-paper township blank, diagram of amended township survey of such original lot or legal forty-acre subdivision so made fractional by such mineral segregation, designating the agricultural portion by appropriate lot number, beginning with No. 1 in each section and giving the area of each lot, and will forthwith transmit one approved copy to the local land office and one to this office. In the meantime the local officers will accept the agricultural application (if no other objection appears), suspend it with reservation of all rights of the applicant if continuously asserted by

him, and upon receipt of amended township diagram will approve the application (if then otherwise satisfactory) as of the date of filing, corrected to describe the tract as designated in the amended survey.

(c) The register and receiver will allow no agricultural claim for any portion of an original lot or legal forty-acre subdivision, where the reduced area is made to appear by reason of approved surveys of mining claims and for which applications for patent have not been filed, until there is submitted by such agricultural applicant a satisfactory showing that such surveyed claims are in fact mineral in character; and applications to have lands asserted to be mineral, or mining locations, segregated by survey, with the view to agricultural appropriation of the remainder, will be made to the register and receiver for submission to the Commissioner of the General Land Office, for his consideration and direction, and must be supported by the affidavit of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required in any case, that the lands sought to be segregated *as mineral* are in fact mineral in character; otherwise, in the absence of satisfactory showing in any such case, such original lot or legal subdivision will be subject to agricultural appropriation only. When any such showing shall be found to be satisfactory and the necessary survey is had, amended township diagram will be required and made as prescribed in the preceding section.

38. The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

| | Acres. |
|---|--------|
| Total area of claim----- | 10.50 |
| Area in conflict with survey No. 302----- | 1.56 |
| Area in conflict with survey No. 948----- | 2.33 |
| Area in conflict with Mountain Maid lode mining claim, unsurveyed---- | 1.48 |

It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the areas of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

39. The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of

his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat survey. Too much care can not be exercised in the preparation of this notice, inasmuch as the data therein are to be repeated in the other notices required by the statute, and upon the accuracy and completeness of these notices will depend, in a great measure, the regularity and validity of the proceedings for patent.

(a) The notices of applications for patent for lands in Alaska are, in many cases, not sufficient to apprise adverse claimants and the public generally of the location of the land applied for, and therefore do not serve the purpose for which such notices are required; nor can the location of the land be ascertained from the application papers themselves and without obtaining information from other sources. This is due principally to the large area of unsurveyed land in the district and remoteness from centers of population of much of the country. In order to give a more definite description of the land applied for the following special instructions with reference to the Territory of Alaska are issued, which are supplemental to but do not change or modify existing regulations:

(b) The field notes of survey of all claims within the Territory of Alaska, where the survey is not tied to a corner of the public survey, shall contain a description of the location or mineral monument to which the survey is tied, by giving its latitude and longitude, and its position with reference to rivers, creeks, mountains or mountain peaks, towns, or other prominent topographical points or natural objects or monuments, giving the distances and directions as nearly accurate as possible, especially with reference to any well-known trail to a town or mining camp, or to a river or mountain appearing on the map of Alaska, which description shall appear in the field notes regardless of whether or not the survey be tied to an existing monument, or to a monument established by the surveyor when making the survey in accordance with existing regulations with reference to the establishment of such monuments. The description of such monument shall appear in a paragraph separate from the description of the courses and distances of the survey.

(c) All notices of applications for patent for lands in the Territory of Alaska, where the survey on which the application is based is not tied to a corner of the public survey, shall, in addition to the description required to be given by existing regulations, describe the monument to which the claim is tied by giving its latitude and longitude and a reference by approximate course and distance to a town, mining camp, river, creek, mountain, mountain peak, or other natural object appearing on the map of Alaska, and any other facts shown by the field notes of survey which shall aid in determining the exact location of such claim without an examination of the record or a reference to other sources. The registers and receivers will exercise discretion in the matter of such descriptions in the published notices, bearing in mind the object to be attained, of so describing the land embraced in the claim as to enable its location to be ascertained from the notice of application. (Instructions, Dec. 23, 1913.)

40. After posting the said plat and notice upon the premises, the claimant will file with the proper register and receiver a copy of such plat and the field notes of survey of the claim, accompanied by the affidavit of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting; a copy of the notice so posted to be attached to and form a part of said affidavit.

41. Accompanying the field notes so filed must be the sworn statement of the claimant that he has the possessory right to the premises therein described, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, State, or Territory in which the claim lies, and with the mining laws of Congress; such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession and the basis of his claim to a patent. The application should contain a full description of the kind and character of the vein or lode and should state whether ore has been extracted therefrom, and, if so, in what amount and of what value. It should also show the precise place within the limits of each of the locations embraced in the application where the vein or lode has been exposed or discovered and the width thereof. The showing in these regards should contain sufficient data to enable representatives of the Government to confirm the same by examination in the field and also enable the land department to determine whether a valuable deposit of mineral actually exists within the limits of each of the locations embraced in the application.

(a) The register and receiver will require each person applying to enter or in any manner acquire title to any of the lands in Alaska, under any law of the United States, to file a corroborated affidavit to the effect that none of the lands covered by his application are embraced in any pending application for an allotment under the act of May 17, 1906 (34 Stat., 197), or in any pending allotment; that no part of said land was at the date of the location of the land claimed under the mining law occupied or claimed by any Indian, whose occupancy or claim existed on the date of the acts granting to natives of Alaska the right to hold land used, occupied, or claimed by them (Acts of Congress of May 17, 1884, 23 Stat., 24, and June 6, 1900, 31 Stat., 330), and had been continued down to and including date of location; that such land is in the *bona fide* legal possession of the applicant; and that no part of such land is in the *bona fide* legal possession of or is occupied by any Indian or native. (37 L. D., 616, and 43 L. D., 88, 272.)

42. This sworn statement must be supported by a copy of each location notice, certified by the legal custodian of the record thereof, and also by an abstract of title of each claim certified by the legal custodian of the records of transfers, or by a duly authorized abstractor of titles. The certificate must state that no conveyances affecting, or purporting to affect, the title to the claim or claims appear of record other than those set forth.

Outside of the Territory of Alaska, the application for patent will be received and filed if the abstract is brought down to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must as soon as practicable thereafter file a supplemental abstract brought down so as to include the

date of the filing of the application. Publication will not be ordered until the showing as to title is thus completed and the local land officers are satisfied that full title was in the applicant on the day of the filing of the application.

In the Territory of Alaska the application for patent will be received and filed and the order for publication issued if the abstract showing full title in the applicant is brought down to a day reasonably near the date of the presentation of the application. A supplemental abstract of title brought down so as to include the date of the filing of the application must be furnished prior to the expiration of the 60-day period of publication.

No certificate from an abstracter or abstract company will be accepted until approval by the Commissioner of the General Land Office of a favorable report of the chief of field division, or United States district attorney whose division or district embraces the lands in question, as to the reliability and responsibility of such abstracter or company. (As amended Jan. 9, 1912.)

43. In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

44. Before approving for publication any notice of an application for mineral patent, local officers will be particular to see that it includes no land which is embraced in a prior or pending application for patent or entry, or for any land embraced in a railroad selection, or for which publication is pending or has been made by any other claimants, and if, in their opinion, after investigation, it should appear that notice of a mineral application should not, for this or other reasons, be approved for publication, they should formally reject the same, giving the reasons therefor, and allow the applicant 30 days for appeal to this office under the Rules of Practice. (As amended Aug. 9, 1911.)

Local officers will give prompt and appropriate notice to the railroad grantee of the filing of every application for mineral patent which embraces any portion of an odd-numbered section of surveyed lands within the primary limits of a railroad land grant, and of every such application embracing any portion of unsurveyed lands within such limits (except as to any such application which embraces a portion or portions of those ascertained or prospective odd-numbered sections only, within the limits of the grant in Montana and Idaho to the Northern Pacific Railroad Company, which have been clasified as mineral under the act of February 26, 1895, without protest by the company within the time limited by the statute or the mineral classification whereof has been approved).

Should the railroad grantee file protest and apply for a hearing to determine the character of the land involved in any such application for mineral patent, proceedings thereunder will be had in the usual manner.

Any application for mineral patent, however, which embraces lands previously listed or selected by a railroad company will be disposed of as provided by the first section of this paragraph, and the applicant afforded opportunity to protest and apply for a hearing or to appeal.

Notice should be given to the duly authorized representative of the railroad grantee, in accordance with the Rules of Practice. When the claims applied for are upon unsurveyed land, the burden of proving that they are situate within prospective odd-numbered sections will rest upon the railroad.

Evidence of service of notice should be filed with the record in each case.

45. Upon the receipt of these papers, if no reason appears for rejecting the application, the register will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of sixty days in a newspaper published nearest to the claim, and will post a copy of such notice in his office for the same period. When the notice is published in a *weekly* newspaper, nine consecutive insertions are necessary; when in a *daily* newspaper, the notice must appear in each issue for sixty-one consecutive issues. In both cases the first day of issue must be excluded in estimating the period of sixty days.

46. The notices so published and posted must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances. (See also par. 39 (a), (b), (c).)

47. The register shall publish the notice of application for patent in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

48. The claimant at the time of filing the application for patent, or at any time within the sixty days of publication, is required to file with the register a certificate of the surveyor general that not less than five hundred dollars' worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces several contiguous locations held in common, that an amount equal to five hundred dollars for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated in a patent, serve to identify the premises fully, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the *locus* thereof: *Provided*, That as to all applications for patents made and passed to entry before July 1, 1898, or which are by protests or adverse claims prevented from being passed to entry before that time, where the application embraces several locations held in common, proof of an expenditure of five hundred dollars upon the group will be sufficient, and an expenditure of that amount need not be shown to have been made upon, or for the benefit of, each location embraced in the application.

49. The surveyor general may derive his information upon which to base his certificate as to the value of labor expended or improvements made from the mineral surveyor who actually makes survey and examination of the premises, in so far as such matters rest in the personal knowledge of the mineral surveyor. The mineral surveyor should specify with particularity and full detail the character and extent of such improvements. As to when and by whom the improvements were made and other essential matters not within such mineral surveyor's personal knowledge, recourse may be had by the surveyor general to corroborated affidavits by persons possessing such personal knowledge, or the best evidence in this behalf otherwise obtainable. This showing should accompany the report of the mineral surveyor as to improvements. (As amended Dec. 16, 1914.)

50. It will be convenient to have this certificate indorsed by the surveyor general, both upon the plat and field notes of survey filed by the claimant as aforesaid.

51. After the sixty days' period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own affidavit showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said sixty days' publication, giving the dates.

52. Upon the filing of this affidavit the register will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of five dollars for each acre and five dollars for each fractional part of an acre, except as otherwise provided by law, the receiver issuing the usual receipt therefor. The claimant will also make a sworn statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the register and receiver of the land office, after which the complete record will be forwarded to the Commissioner of the General Land Office and a patent issued thereon if found regular.

53. At any time prior to the issuance of patent protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest can not, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a co-owner excluded from an application for patent does not have an "adverse" claim within the meaning of sections 2325 and 2326 of the Revised Statutes. (See *Turner v. Sawyer*, 150 U. S., 578-586.)

54. Any party applying for patent as *trustee* must disclose fully the nature of the trust and the name of the *cestui que trust*; and such

trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

55. The annual expenditure of one hundred dollars in labor or improvements on a mining claim, required by section 2324 of the Revised Statutes, is, with the exception of certain phosphate placer locations, validated by the act of January 11, 1915 (see regulations thereunder, dated Mar. 31, 1915, in Addenda, p. 92), solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts.

56. The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

57. The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

Placer Claims.

58. The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

59. The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat them here, it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter, and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims; the price of placer claims being fixed, however, at two dollars and fifty cents per acre or fractional part of an acre.

60. In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer gold, there must be

stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim; streams, if any, must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by section 2333, Revised Statutes, must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

While these data are required as a part of the mineral surveyor's report under paragraph 167, in case of placers taken by special survey, it is proper that the application for patent incorporate these facts under the oath of the claimant.

Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

As prescribed by paragraph 25, this statement as to the description and value of the improvements must be corroborated by the affidavits of two disinterested witnesses.

Applications awaiting entry, whether published or not, must be made to conform to these regulations, with respect to proof as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

Local land officers are instructed that if the proofs submitted in placer applications under this paragraph are not satisfactory as showing the land as a whole to be placer in character, or if the claims impinge upon or embrace water courses or bodies of water, and thus raise a doubt as to the *bona fides* of the location and application, or the character and extent of the deposit claimed thereunder, to call for further evidence, or if deemed necessary, request the specific attention of the Chief of Field Service thereto in connection with the usual notification to him under the circular instructions of April 24, 1907,¹ and suspend further action on the application until a report thereon is received from the field officer.

Attention is directed to the act of Congress approved August 1, 1912 (37 Stat. L., 242), entitled "An act to modify and amend the mining laws in their application to the Territory of Alaska, and for

¹ Rule 7 of this circular amended Oct. 30, 1913. (See 42 L. D., 474; see also addenda, p. 81.)

other purposes." In administering this act the foregoing regulations should be followed in so far as they are applicable, and these additional instructions of October 29, 1912, are prescribed:

It is important to note that this act applies exclusively to placer mining claims located in Alaska on or after August 1, 1912. It does not in any manner relate to lode mining claims, or to placer mining claims located prior to said date. The terms of the act lay strict limitations and conditions with respect to placer locations made upon or after said date.

Section 1 of the act provides that no association placer claim shall be located after August 1, 1912, in excess of 40 acres. This limitation is positive whatever may be the number of persons associated together or whatever the local district rules or regulations may permit.

Said section further provides that on every placer mining claim located in Alaska after the passage of the act, and until patent therefor has been issued, not less than \$100 worth of labor must be performed or improvements made during each year, including the year of location, for each and every 20 acres or excess fraction thereof included in the claim. This means that the *first* annual expenditure on such a placer mining location must be accomplished for and during the calendar year in which the claim is located, instead of during the calendar year succeeding that in which the location is made. Moreover, the amount of annual expenditure is dependent upon the size of the claim, it being required that at least \$100 must be expended for each 20 acres, or excess fraction thereof, embraced in the location.

By section 2 it is provided that no person, as attorney or agent for another, may locate any placer mining claim unless duly authorized by a power of attorney properly acknowledged and recorded in some recorder's office within the judicial division where the location is made. Furthermore, an authorized agent or attorney can act in making locations of placer mining claims for only two individual principals or one associate principal during any calendar month and during that period may not lawfully locate more than two claims for any one principal either individual or association. No placer claim can lawfully be located except in compliance with and under the limitations of the act.

In order that the land department may be fully advised in the premises, the following requirements must be met with regard to applications for placer mining claims located in Alaska on or after August 1, 1912:

(a) Where location is made by agent or attorney the power of attorney must be in writing and must be executed and acknowledged in accordance with the laws of the Territory of Alaska or of the State, Territory, or District in which it shall be executed. It must be recorded in the proper recorder's office, as prescribed by the act. The application for patent must be accompanied by a certified copy of such power of attorney which must show the recordation thereof; but it will be sufficient if such certified copy is attached to and made a part of the abstract of title.

(b) One of the principal purposes of the act is to limit the number of placer mining locations made in Alaska through agents or attorneys. An agent or attorney can not at one time represent more than *two individuals or one association* under powers of attorney. A duly

authorized agent may make two locations for each of two individual principals, or for one association principal, during any calendar month, but he can make no further locations during that month for those or other principals.

The application for patent should accordingly be accompanied by the sworn statement of the agent or attorney setting forth specifically the names of all placer mining claims, together with the date of location and names of the locators, which were located or attempted to be located by him under powers of attorney during the calendar month in which the placer claim applied for was located.

(c) By section 3 it is prescribed that no person shall directly locate, or through an agent or attorney cause or procure to be located, for himself more than two placer mining claims in any calendar month: *Provided, however,* That one or both of such locations may be included in an association claim.

Whenever a person or an association has participated in the locating of placer mining claims in Alaska to the extent of two such claims in any calendar month, such person or such association thereby exhausts the right to make placer location for that month. The application for patent, therefore, for a placer mining claim located in Alaska on or after August 1, 1912, must contain or be accompanied by a specific statement, under oath, as to each locator who had an interest therein, showing specifically and in detail all placer locations made by him, or in which he was associated, either directly or through any agent or attorney, during the calendar month in which the claim applied for was located. If no locations in excess of those permitted by law were made during such calendar month a specific statement, under oath, to that effect, should be submitted. This showing must be made in addition to that hereinabove required of the agent himself.

Section 4 of the act prohibits the patenting of any placer mining claim located in Alaska after the passage of the act, which contains a greater area than that fixed by law or which is longer than three times its greatest width. The surveyor general will be careful to observe the above requirements and will not approve any survey of a placer location which does not in area and dimensions conform to the provisions of law.

By section 5 of the act it is declared that any placer mining claim attempted to be located in violation of the provisions and limitations of the act shall be null and void and the whole area covered by such attempted location may be located by any qualified person the same as if no such prior attempted location had been made. Consequently, any attempted placer location not made in conformity with the act is a nullity and the land covered thereby is open for and subject to proper location at any time.

It will be observed that the act does not affect the number of claims, lode or placer, and if placer whether located before or after the passage of the act, which may be included in a single application proceeding.

MILL SITES.

61. Land entered as a mill site must be shown to be nonmineral. Mill sites are simply auxiliary to the working of mineral claims, and as section 2337, which provides for the patenting of mill sites, is

embraced in the chapter of the Revised Statutes relating to mineral lands, they are therefore included in this circular.

62. To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, under oath, in manner already set forth herein, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such noncontiguous mill site, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a mill site if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

63. Where the original survey includes a lode claim and also a mill site the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the mill site as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site as well as upon the vein or lode claim for the statutory period of sixty days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being five dollars for each acre and fractional part of an acre embraced by such lode and mill-site claim.

64. In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed herein for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at said price per acre.

65. In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of two or more persons capable, from acquaintance with the land, to testify understandingly.

CITIZENSHIP.

66. The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of their charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the affidavit of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This affidavit must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the affidavit of citizenship to act for them in the matter of their application for patent.

67. In case of an individual or an association of individuals who do not appear by their duly authorized agent, the affidavit of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence, will be required.

68. In case an applicant has declared his intention to become a citizen or has been naturalized, his affidavit must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

69. The affidavit of the claimant as to his citizenship may be taken before the register or receiver, or any other officer authorized to administer oaths within the land districts; or, if the claimant is residing beyond the limits of the district, the affidavit may be taken before the clerk of any court of record or before any notary public of any State or Territory.

70. If citizenship is established by the testimony of disinterested persons, such testimony may be taken at any place before any person authorized to administer oaths, and whose official character is duly verified.

71. No entry will be allowed until the register has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations. Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

72. The mineral entries will be given the current serial numbers according to the provisions of the circular of June 10, 1908, whether the same are of lode or of placer claims or of mill sites.

73. In sending up the papers in a case the register must not omit certifying to the fact that the notice was posted in his office for the full period of sixty days, such certificate to state distinctly when such posting was done and how long continued. The schedule of papers, form 4-252f, should accompany the returns with all mineral applications and entries allowed.

POSSESSORY RIGHT.

74. The provisions of section 2332, Revised Statutes, will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

75. When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the State or Territory, together with his sworn statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by

his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and *bona fides* which he may desire to submit in support of his claim.

76. There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State or Territory as aforesaid other than that which has been finally decided in favor of the claimant.

77. The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

ADVERSE CLAIMS.

78. An adverse claim must be filed with the register and receiver of the land office where the application for patent is filed or with the register and receiver of the district in which the land is situated at the time of filing the adverse claim. It must be on the oath of the adverse claimant, or it may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated.

79. Where an agent or attorney in fact verifies the adverse claim, he must distinctly swear that he is such agent or attorney, and accompany his affidavit by proof thereof.

80. The agent or attorney in fact must make the affidavit in verification of the adverse claim within the land district where the claim is situated.

81. The adverse claim so filed must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator. If the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the affidavit of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

82. In order that the "*boundaries*" and "*extent*" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: *Provided, however,* That if the application for patent describes the claim by

legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions, it will generally be more satisfactory if the plat thereof is made from an actual survey by a mineral surveyor, and its correctness officially certified thereon by him.

83. Upon the foregoing being filed within the sixty days' period of publication, the register, or in his absence the receiver, will immediately give notice in writing to *the parties* that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within thirty days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that, should such adverse claimant fail to do so, his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

84. When an adverse claim is filed as aforesaid, the register or receiver will indorse upon the same the precise date of filing, and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be stayed with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been finally adjudicated in court or the adverse claim waived or withdrawn.

(a) The act of Congress approved June 7, 1910 (36 Stat. L., 459), relates to the filing of adverse claims and the institution of suits thereon, with respect to mineral applications in the Territory of Alaska.

In administering this act the foregoing regulations should be followed in so far as they are applicable, and these additional instructions are prescribed.

EXTENSION OF TIME FOR FILING ADVERSE CLAIMS.

The act provides that adverse claims may be filed at any time during the 60-day period of publication or within 8 months thereafter. This provision applies to any application where the 60-day period of publication ended with, or ends after, June 7, 1910, and operates to enlarge by 8 months additional the time within which an adverse claim may be filed. This provision does not apply to any application under which the 60-day period of publication ended with, or before, June 6, 1910, for, if no adverse claim was seasonably filed in such case, the statutory assumption that none existed has arisen, upon the expiration of the publication period, in favor of the applicant.

EXTENSION OF TIME WITHIN WHICH ADVERSE SUITS MAY BE INSTITUTED.

(b) It is also provided by the act that adverse suits may be instituted at any time within 60 days after the filing of adverse claims in the local land office. This provision applies to any adverse claim under which the 30-day period fixed under the former law for commencing the adverse suit was running on, or expired with, June 7,

1910, and enlarges such time to a period of 60 days, and also to any adverse claim which is seasonably filed on, or after, June 7, 1910. Such provision has no operation in a case where, under the former law, the 30-day period within which to institute suit on an adverse claim expired with, or ended before, June 6, 1910, and the 60-day publication period also expired on or before June 6, 1910.

Registers and receivers of United States land offices in Alaska will exercise the greatest care in applying the provisions of the act, and will allow no mineral entry until after the expiration of the full period granted for the filing of adverse claims. For example, on any application under which the publication period ended with, or after, June 7, 1910, no entry will in any event be allowed until after the expiration of the eight-months period following the publication period. (Instructions, June 25, 1910.)

85. Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment rendered determining the right of possession, it will not be sufficient to file with the register a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must, before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by section 2326, Revised Statutes, and a certificate of the clerk of the court under the seal of the court showing, in accord with the record facts of the case, that the judgment mentioned and described in the judgment roll aforesaid is a final judgment; that the time for appeal therefrom has, under the law, expired, and that no such appeal has been filed, or that the defeated party has waived his right to appeal. Other evidence showing such waiver or an abandonment of the litigation may be filed. (As amended Apr. 9, 1915.)

86. Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

87. After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

88. Where an adverse claim has been filed but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the district court of the United States for the district in which the claim is situated, will be required. (Amended Nov. 6, 1912.)

APPOINTMENT OF SURVEYORS FOR SURVEY OF MINING CLAIMS AND CHARGES.

89. Section 2334 provides for the appointment of surveyors to survey mining claims, and authorizes the Commissioner of the General Land Office to establish the rates to be charged for surveys and for newspaper publications in mining cases. Under this authority of law, the following rates have been established as the maximum charges for newspaper publications:

(1) The charge for the publication of notice of application for patent in a mining case, in all districts, exclusive of Fairbanks,

Alaska, shall not exceed the legal rates allowed by the laws of the State, wherein the notice is published, for the publication of legal notices, and in no case shall the charge exceed \$7 for each 10 lines of space occupied where publication is had in a daily newspaper, and where a weekly newspaper is used as a medium of publication \$5 shall be the maximum charge for the same space. Such charge shall be accepted as full payment for publication in each issue of the newspaper for the entire period required by law.

For such publications in the Fairbanks district the maximum rate is fixed at \$10 for each 10 lines of space in a daily newspaper for the required period, and at \$7 for the same space and time if publication be had in a weekly newspaper.

It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates are established upon the understanding that they are to be in the usual body type used for legal notices.

(2) For the publication of citations in contests or hearings, involving the character of lands, the charges may not exceed the rates provided for similar notices by the law of the State, and shall not exceed \$8 for 5 publications in a weekly newspaper, or \$10 for publication in a daily newspaper for 30 days. (As amended June 23-July 1, 1913, and Nov. 28, 1913.)

90. The surveyors general of the several districts will, in pursuance of said law, appoint in each land district as many competent surveyors for the survey of mining claims as may seek such appointment, it being distinctly understood that all expenses of these notices and surveys are to be borne by the mining claimants and not by the United States. The statute provides that the claimant shall also be at liberty to employ any United States mineral surveyor to make the survey. Each surveyor appointed to survey mining claims before entering upon the duties of his office or appointment shall be required to enter into a bond of not less than \$5,000 for the faithful performance of his duties.

91. With regard to the platting of the claim and other office work in the surveyor general's office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States treasurer or designated depository in favor of the United States Treasurer, to be passed to the credit of the fund created by "deposits by individuals for surveying public lands," and file with the surveyor general duplicate certificates of such deposit in the usual manner.

92. The surveyors general will endeavor to appoint surveyors to survey mining claims so that one or more may be located in each mining district for the greater convenience of miners.

93. The usual oaths will be required of these surveyors and their assistants as to the correctness of each survey executed by them.

The duty of the surveyor ceases when he has executed the survey and returned the field notes and preliminary plat thereof with his report to the surveyor general. He will not be allowed to prepare for the mining claimant the papers in support of an application for patent, or otherwise perform the duties of an attorney before the land office in connection with a mining claim.

The surveyors general and local land officers are expected to report any infringement of this regulation to this office.

94. Should it appear that excessive or exorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with the view of correcting the abuse.

FEES OF REGISTERS AND RECEIVERS.

95. The fees payable to the register and receiver for filing and acting upon applications for mineral-land patents are five dollars to each officer, to be paid by the applicant for patent at the time of filing, and the like sum of five dollars is payable to each officer by an adverse claimant at the time of filing his adverse claim. (Sec. 2238, R. S., par. 9.)

[Paragraphs 96, 97, and 98 are superseded by the general circular instructions of May 4, 1912, prescribing the method of keeping records and accounts relating to the public lands.]

HEARINGS TO DETERMINE CHARACTER OF LANDS.

99. The Rules of Practice in cases before the United States district land offices, the General Land Office, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the character of lands.

100. Public land returned by the surveyor general as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome by testimony taken in the manner hereinafter described.

101. Hearings to determine the character of lands:

(1) Lands returned as mineral by the surveyor general.

When such lands are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral affidavit in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is *not* required, notice thereof must first be given by publication for sixty days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry, location, or selection will be allowed, if otherwise regular.

(2) Lands returned as agricultural and alleged to be mineral in character.

Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

[Paragraphs 102 to 104, inclusive, are superseded by appropriate instructions relative to nonmineral proofs in railroad, State, and

forest lieu selections contained in separate circulars. (See, as to railroad selections, Instructions in 43 L. D., 476; as to State selections, circular in 39 L. D., 39; and as to forest lieu selections, 31 L. D., 372, 33 L. D., 558, 36 L. D., 278, 346, and 38 L. D., 287.)]

105. At hearings to determine the character of lands the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinabar, lead, tin, or copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof—whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular ten-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all. In every case, where practicable, an adequate quantity or number of representative samples of the alleged mineral-bearing matter or material should be offered in evidence, with proper identification, to be considered in connection with the record, with which they will be transmitted upon each appeal that may be taken. Testimony may be submitted as to the geological formation and development of mineral on adjoining or adjacent lands and their relevancy.

106. The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, and the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular ten-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

107. The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

108. When the case comes before this office, such decision will be made as the law and the facts may justify. In cases where a survey is necessary to set apart the mineral from the agricultural land, the proper party, *at his own expense*, will be required to have the work done by a reliable and competent surveyor to be designated by the surveyor general. Application therefor must be made to the register and receiver, accompanied by description of the land to be segregated and the evidence of service upon the opposite party of notice of his intention to have such segregation made. The register and receiver will forward the same to this office, when the necessary instructions for the survey will be given. The survey in such case, where the claims to be segregated are vein or lode claims, must be

executed in such manner as will conform to the requirements in section 2320, Revised Statutes, as to length and width and parallel end lines.

(a) In order to secure uniformity of practice in the execution of mineral segregation surveys authorized under paragraph 108 et seq. of these regulations and to present a proper basis for intelligent action, the following directions are given. They will supersede all previous instructions with which they are in conflict, and will be adopted without reference to precedent or practice formerly permitted by the General Land Office or the Department.

(b) There appears to exist a very general, although erroneous, assumption that, because the surveys in question relate to the segregation of mineral land, are authorized by the mining regulations, and are usually executed by United States mineral surveyors, they therefore partake of the nature of mineral surveys. That this is not the case will be evident upon consideration of the fact that the necessity for mineral segregation surveys arises almost exclusively with reference to "lands returned as agricultural and alleged to be mineral in character" (ante, par. 101, sec. 2), where the survey, made at the instance, for the benefit, and at the expense of the homestead entryman, is designed solely to define the boundaries of, and provide a legal description for, the *agricultural* land for which application is made. The circumstances that such surveys are usually executed by United States mineral surveyors is without significance, as the regulations provide only that the work shall be done by "a reliable and competent surveyor to be designated by the surveyor general." This would include county or other surveyors in private practice.

(c) Authority for the survey having issued, and a surveyor having been designated by the surveyor general, the instructions addressed to the surveyor will particularly emphasize the fact that the survey is nonmineral in character, and as an aid to the preparation of such instructions the surveyor general's attention is directed to the following considerations:

(d) To all intents and purposes the segregation survey is *ex parte* procedure and confers no permanent rights or benefits upon the mineral claimant. The definition, in whole or in part, of the boundaries of the mining claim is merely incidental to the determination of the confines of the agricultural entry, and the survey, which may involve the retracement and reestablishment of the public-land lines and the subdivision of the section, is effective upon the mineral claim only as a location survey, permitting greater accuracy of description than is usually attained by the somewhat crude methods of the locator.

(e) While a discussion in detail of the field procedure attendant upon the execution of mineral segregation surveys is beyond the purpose of these regulations, and is a subject properly to be determined by the surveyor general, after consideration of the conditions surrounding the individual case, the *extent* of the required operations is a question of such importance, as affecting not only the actual field work but also the method to be adopted for the subsequent office computations, that some comment thereon appears desirable.

(f) As a preliminary to its consideration, however, it is proper to recognize the generally accepted principle that where any legal subdivision of the public domain is invaded by a segregation survey the

former loses its identity as a unit of disposal, and the resultant fractional lots must depend for their area upon the data supplied by the survey, without reference to the stated area of the subdivision. This principle, while intrinsically sound, is found in practice to result in a refinement of little utility when applied to regular sections whose closure is acceptable. Its observance is therefore frequently ignored, and this is true, in particular, where the segregation of patent mineral surveys is concerned, the procedure in such cases being merely that of office protraction and computation from the assembled mineral and township records.

(g) The *extent* of any mineral segregation survey is dependent primarily upon the *condition of the section or sections invaded*, as indicated by the actual alignment and measurement of the boundaries thereof. With this fact clearly in mind, and with an equal recognition of the nonmineral character of the survey, the surveyor will, after preliminary reconnaissance, readily determine the amount of field work required in any given case. It frequently happens that a direct connection of the mineral location by a tie or ties to convenient existing and identified corners of the public-land survey, followed by a survey of the out-boundaries of the mining claim or claims, thus presenting data equivalent to those supplied by a patent mineral survey, will, with the subsequent office protractions for area, be found adequate for the segregation, but this sufficiency is evident only when the section invaded is itself found to be actually conformable, within Manual limits, to the record thereof. In many other cases the actual condition of the section may be so far removed from that represented by the record that it would be impossible to assert even approximate accuracy for lot areas obtained by deducting the acreage of the mineral land, as determined by the survey, from the nominal area of the legal subdivision shown upon the township plat.

(h) It is therefore apparent that the first duty of the surveyor is to determine by retracement the actual condition of the section invaded, and provision therefor should be embodied, in future, in the instructions of the surveyor general. If the result is satisfactory, and a reasonable agreement with the approved record is indicated, he may then proceed with the segregation survey; and upon evidence of proper closure the surveyor general's office may determine the resulting lot areas by protraction and deduction, with the assurance that no error in excess of allowable limits has been introduced. If, on the other hand, the retracement reveals radical defects in the section, and serious disagreement with the record, it will be necessary for the surveyor to subdivide the section, or so much thereof as is invaded by the mineral claims, restoring any lost corners, and locating such quarter-quarter-section corners as are required. The segregation survey will then be referable strictly to the conditions so defined, and the resultant lot areas will be calculated upon the basis of the data furnished by the *survey* and *not* by reference to the nominal areas shown upon the township plat.

(i) Where, however, it appears upon retracement that the absence of corners, and the obliteration of other evidences of the original public land survey is so general as to require extensive restorations and a search for controlling corners remote from the section or sections affected by the segregation, the execution of which would impose upon the entryman unreasonable hardship and expense, the

designated surveyor will proceed *only* with the survey of the mineral location as provided in subdivision (g) hereof, and will, upon transmittal of his returns to the United States surveyor general, report to that officer the conditions which precluded his completion of the survey. Upon receipt of such report, the United States surveyor general will, if the explanations thus submitted are acceptable, request authority from the General Land Office to employ the services of an United States surveyor for the resurvey and subdivision necessary to complete the segregation and determine the true condition of the section or sections involved. It is believed, however, that the necessity for this procedure will not frequently arise, and surveyors general are advised that authority for such action will issue only in cases that are clearly exceptional.

(j) Regarding the limit of error applicable to segregation surveys, it appears illogical to demand greater accuracy in the subdivision than obtains in the section itself, and therefore a limit of one part in 640 in latitude and in departure may be adopted, but the surveyor should strive to reduce the error in closure wherever possible. The considerations which require great precision in an official mineral survey are not present in these cases, but the establishment of the lines and corners of the mineral location should be attended by such care and exactness of execution that their position will not require revision by the patent survey which may follow. This is highly important for the reason that while theoretically subject to such revision, the result in practice is the creation of small fractional areas of questionable utility for mining operations, and yet excluded from the agricultural classification.

(k) Upon completion of the survey and the receipt by the surveyor general's office of the returns thereof, he will cause a critical examination to be made with reference to their accuracy and sufficiency. The field notes will be so prepared as to present, first, the record of the sectional retracement, restoration, and subdivision; second, the connection of the mineral location or locations therewith; and, finally, the record of the segregation survey proper, the latter to include a statement of the area of the mineral lands eliminated from each section. All measurements will be returned in chains and links. The title page and oaths covering the notes will be of the regulation township form (4-679, 4-680), and will contain such descriptive matter as is appropriate. One transcript of the whole will be prepared for the files of the General Land Office.

(l) The plat of survey will be prepared in triplicate, and will be of standard township size. It will exhibit only the section or sections involved, and will display an appropriate title and certificate of approval. A scale of 10 or 20 chains to the inch is suggested as convenient. The plat will be rendered strictly conformable to the field notes of the survey and will present all essential data as to courses and distances (true lines) of sectional retracements and subdivision; boundaries of the mineral location or locations; ties, intersections, etc.; and will in all cases afford information sufficient for a determination of the areas of the fractional lots created.

(m) The lots in question will be designated in the usual manner by consecutive numbers, beginning with that next higher than the series of the previous survey. Their areas will be calculated in

strict conformity with the principles heretofore discussed; that is, by deduction of the returned and verified mineral area (which need not appear upon the plat) from the nominal area of the legal subdivision, where the section is in reasonable agreement with its record and requires no field subdivision, or in the case of defective sections, by balanced traverses, based upon the actual field returns of the combined subdivisional and segregation surveys.

(n) Upon completion of the office work and approval of the survey the duplicate plat and transcript of field notes will be transmitted to the General Land Office for examination and acceptance.

(o) Inquiries as to procedure in special cases, and the requests for instructions or explanation covering minor items of practice not herein noted, should be addressed to the Commissioner of the General Land Office in connection with the specific survey to which they are referable.

109. Such survey when executed must be properly sworn to by the surveyor, either before a notary public, United States commissioner, officer of a court of record, or before the register or receiver, the deponent's character and credibility to be properly certified to by the officer administering the oath.

110. Upon the filing of the plat and field notes of such survey, duly sworn to as aforesaid, with the surveyor general, for his verification and approval, he will, if he finds the work correctly performed, approve the same, sign and date the approved plats and field notes, and thereupon transmit one copy of the plat and field notes to this office for its examination and acceptance. After this office shall have examined and accepted the returns of such survey and the plat and field notes thereof, it will duly notify the surveyor general of its examination and acceptance, who will thereafter promptly furnish an authenticated copy of such plat to the proper local land office for filing there.

The copy of plat furnished the local office and this office must be a diagram verified by the surveyor general, showing the claim or claims segregated, and designating the separate fractional agricultural tracts in each 40-acre legal subdivision by the proper lot number, beginning with No. 1 in each section, and giving the area in each lot, the same as provided in paragraph 37 in the survey of mining claims on surveyed lands, and paragraph 108, subdivision (m).

111. The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land, he must proceed as in other cases, in accordance with the foregoing regulations.

Blank forms for proofs in mineral cases are not furnished by the General Land Office.

TERRITORY OF ALASKA.

112. Section 13, act of May 14, 1898, according to native-born citizens of Canada "the same mining rights and privileges" in the Territory of Alaska as are accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada, is not now and never has been operative, for

the reason that the only mining rights and privileges granted to any person by the laws of the Dominion of Canada are those of leasing mineral lands upon the payment of a stated royalty, and the mining laws of the United States make no provision for such leases.

113. For the sections of the act of June 6, 1900, making further provision for a civil government for Alaska, which provide for the establishment of recording districts and the recording of mining locations; for the making of rules and regulations by the miners and for the legalization of mining records; for the extension of the mining laws to the Territory of Alaska, and for the exploration and mining of tide lands and lands below low tide; and relating to the rights of Indians and persons conducting schools or missions. see page 21 of this circular.

MINERAL LANDS WITHIN NATIONAL FORESTS.

114. The act of June 4, 1897, provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves subject to location and entry under the general mining laws in the usual manner.

The act also provides that "The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by *bona fide* settlers, miners, residents, and prospectors for minerals, for firewood, fencing, building, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located."

Transfer of National Forests.

Act of February 1, 1905 (33 Stat., 628).

The Secretary of the Department of Agriculture shall, from and after the passage of this act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March 3, 1891, and acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.

(For further information see Use Book—Forest Service.)

SURVEYS OF MINING CLAIMS.

General Provisions.

115. Under section 2334, Revised Statutes, the United States surveyor general "may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims."

116. Persons desiring such appointment should therefore file their applications with the surveyor general for the district wherein appointment is asked, who will furnish all information necessary.

117. All appointments of mineral surveyors must be submitted to the Commissioner of the General Land Office for approval.

118. The surveyors general have authority to suspend or revoke the appointments of mineral surveyors at any time, for cause, and to suspend or revoke the appointments at such times as the bonds become subject to renewal under the act of March 2, 1895 (28 Stat., 808), for reasons appearing sufficient to sustain a refusal to appoint in the first instance. The surveyors, however, will be allowed the right of appeal from the action of the surveyor general in the usual manner. The appeal must be filed with the surveyor general, who will at once transmit the same, with a full report, to the General Land Office. (20 L. D., 283; amendment approved July 29, 1911.)

119. [Omitted.]

120. Neither the surveyor general nor the Commissioner of the General Land Office has jurisdiction to settle differences relative to the payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner—i. e., in the local courts. The Department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

121. The surveyors general should appoint as many competent mineral surveyors as apply for appointment, in order that claimants may have a choice of surveyors, and be enabled to have their work done on the most advantageous terms.

122. The schedule of charges for office work should be as low as is possible. No additional charges should be made for orders for amended surveys, unless the necessity therefor is clearly the fault of the claimant, or considerable additional office work results therefrom.

123. [Omitted.]

124. Mineral surveyors will address all official communications to the surveyor general. They will, when a mining claim is the subject of correspondence, give the name and survey number. In replying to letters they will give the subject matter and date of the letter. They will promptly notify the surveyor general of any change in post-office address.

125. Mineral surveyors should keep a complete record of each survey made by them and the facts coming to their knowledge at the time, as well as copies of all their field notes, reports, and official correspondence, in order that such evidence may be readily produced when called for at any future time. Field notes and other reports must be written in a clear and legible hand or typewritten, in non-copying ink, and upon the proper blanks furnished gratuitously by the surveyor general's office upon application therefor. No interlineations or erasures will be allowed.

126. No return by a mineral surveyor will be recognized as official unless it is over his signature as a United States mineral surveyor, and made in pursuance of a special order from the surveyor general's office. After he has received an order for survey he is required to make the survey and return correct field notes thereof to the surveyor general's office without delay.

127. The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.

128. A mineral surveyor is precluded from acting, either directly or indirectly, as attorney in mineral claims. His duty in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the surveyor general. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent, or otherwise perform the duties of an attorney before the land office in connection with a mining claim. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths to the parties in interest. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or inconvenience would result from a strict compliance with this rule, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit to the proper surveyor general a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in his official capacity as surveyor. He will not employ chainmen interested therein in any manner.

Method of Survey.

129. The survey made and returned must, in every case, be an actual survey on the ground in full detail, made by the mineral surveyor in person after the receipt of the order, and without reference to any knowledge he may have previously acquired by reason of having made the location survey or otherwise, and must show the actual facts existing at the time. This precludes him from calculating the connections to corners of the public survey and location monuments, or any other lines of his survey through prior surveys made by others and substituting the same for connections or lines of the survey returned by him. The term *survey* in this paragraph applies not only to the usual field work, but also to the examinations required for the preparation of affidavits of five hundred dollars expenditure, descriptive reports on placer claims, and all other reports.

130. The survey of a mining claim may consist of several contiguous locations, but such survey must, in conformity with statutory requirements, distinguish the several locations, and exhibit the boundaries of each. The survey will be given but one number.

131. The survey must be made in strict conformity with, or be embraced within, the lines of the location upon which the order is based. If the survey and location are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of survey to the corresponding corner of the location, and the location corner must be fully described, so that it can be identified. The lines of the location, as found upon the ground, must be laid down upon the preliminary plat in such a manner as to contrast and show their relation to the lines of survey.

132. In view of the principle that courses and distances must give way when in conflict with fixed objects and monuments, the surveyor will not, under any circumstances, change the corners of the location for the purpose of making them conform to the description in the record. If the difference from the location be slight, it may be explained in the field notes.

133. No mining claim located subsequent to May 10, 1872, should exceed the statutory limit in width on each side of the center of vein or 1,500 feet in length, and all surveys must close within 50-100 feet in 1,000 feet, and the error must not be such as to make the location exceed the statutory limit, and in absence of other proof the discovery point is held to be the center of the vein on the surface. The course and length of the vein should be marked upon the plat.

134. All mineral surveys must be made with a transit, with or without solar attachment, by which the meridian can be determined independently of the magnetic needle, and all courses must be referred to the true meridian. The variation should be noted at each corner of the survey. The true course of at least one line of each survey must be ascertained by astronomical observations made at the time of the survey; the data for determining the same and details as to how these data were arrived at must be given. Or, in lieu of the foregoing, the survey must be connected with some line the true course of which has been previously established beyond question, and in a similar manner, and, when such lines exist, it is desirable in all cases that they should be used as a proof of the accuracy of subsequent work.

135. Corner No. 1 of each location embraced in a survey must be connected by course and distance with nearest corner of the public survey or with a United States location monument, if the claim lies within two miles of such corner or monument. If both are within the required distance, the connection must be with the corner of the public survey.

136. Surveys and connections of mineral claims may be made in suspended townships in the same manner as though the claims were upon unsurveyed land, except as hereinafter specified, by connecting them with independent mineral monuments. At the same time, the position of any public-land corner which may be found in the neighborhood of the claim should be noted, so that, in case of the release of the township from suspension, the position of the claim can be shown on the plat.

137. A mineral survey must not be returned with its connection made only with a corner of the public survey, where the survey of the township within which it is situated is under suspension, nor connected with a mineral monument alone, when situated within the limits of a township the regularity and correctness of the survey of which is unquestioned.

138. In making an official survey, corner No. 1 of each location must be established at the corner nearest the corner of the public survey or location monument, unless good cause is shown for its being placed otherwise. If connections are given to both a corner of the public survey and location monument, corners Nos. 1 should be placed at the corner nearest the corner of the public survey. When a boundary line of a claim intersects a section line, courses and dis-

tances from point of intersection to the Government corners at each end of the half mile of section line so intersected must be given.

139. In case a survey is situated in a district where there are no corners of the public survey and no monuments within the prescribed limits, a mineral monument must be established, in the location of which the greatest care must be exercised to insure permanency as to site and construction. (See, also, provisions of par. 39b.)

140. The site, when practicable, should be some prominent point, visible for a long distance from every direction, and should be so chosen that the permanency of the monument will not be endangered by snow, rock, or landslides, or other natural causes.

141. The monument should consist of a stone not less than 30 inches long, 20 inches wide, and 6 inches thick, set halfway in the ground, with a conical mound of stone 4 feet high and 6 feet base alongside. The letters U. S. L. M., followed by the consecutive number of the monument in the district, must be plainly chiseled upon the stone. If impracticable to obtain a stone of required dimensions, then a post 8 feet long, 6 inches square, set 3 feet in the ground, scribed as for a stone monument, protected by a well-built conical mound of stone of not less than 3 feet high and 6 feet base around it, may be used. The exact point for connection must be indicated on the monument by an X chiseled thereon; if a post is used, then a tack must be driven into the post to indicate the point.

142. From the monument, connections by course and distance must be taken to two or three bearing trees or rocks, and to any well-known and permanent objects in the vicinity, such as the confluence of streams, prominent rocks, buildings, shafts, or mouths of adits. Bearing trees must be properly scribed B. T. and bearing rocks chiseled B. R., together with the number of the location monument; the exact point on the tree or stone to which the connection is taken should be indicated by a cross or other unmistakable mark. Bearings should also be taken to prominent mountain peaks, and the approximate distance and direction ascertained from the nearest town or mining camp. A detailed description of the locating monument, with a topographical map of its location, should be furnished the office of the surveyor general by the surveyor.

143. Corners may consist of—

First. A stone at least 24 inches long set 12 inches in the ground, with a conical mound of stone $1\frac{1}{2}$ feet high, 2 feet base, alongside.

Second. A post at least 3 feet long by 4 inches square, set 18 inches in the ground and surrounded by a substantial mound of stone or earth.

Third. A rock in place.

A stone should always be used for a corner when possible, and when so used the kind should be stated.

144. All corners must be established in a permanent and workman-like manner, and the corner and survey number must be neatly chiseled or scribed on the sides facing the claim. The *exact* corner point must be permanently indicated on the corner. When a rock in place is used, its dimensions above ground must be stated and a cross chiseled at the exact corner point.

145. In case the point for the corner be inaccessible or unsuitable a witness corner, which must be marked with the letters W. C. in addition to the corner and survey number, should be established. The

witness corner should be located upon a line of the survey and as near as possible to the true corner, with which it must be connected by course and distance. The reason why it is impossible or impracticable to establish the true corner must always be stated in the field notes, and in running the next course it should be stated whether the start is made from the true place for corner or from witness corner.

146. The identity of all corners should be perpetuated by taking courses and distances to bearing trees, rocks, and other objects, as prescribed in the establishment of location monuments, and when no bearings are given it should be stated that no bearings are available. Permanent objects should be selected for bearings whenever possible.

147. If an official mineral survey has been made in the vicinity, within a reasonable distance, a further connecting line should be run to some corner thereof; and in like manner all conflicting surveys and locations should be so connected, and the corner with which connection is made in each case described. Such connections will be made and conflicts shown according to the boundaries of the neighboring or conflicting claims as each is marked, defined, and actually established upon the ground. The mineral surveyor will fully and specifically state in his return *how* and by what *visible evidences* he was able to identify on the ground the several conflicting surveys and those which appear according to their returned tie or boundary lines to conflict, if they were so identified, and report errors or discrepancies found by him in any such surveys. In the survey of contiguous claims which constitute a consolidated group, where corners are common, bearings should be mentioned but once.

148. The mineral surveyor should note carefully all topographical features of the claim, taking distances on his lines to intersections with all streams, gulches, ditches, ravines, mountain ridges, roads, trails, etc., with their widths, courses, and other data that may be required to map them correctly. All municipal or private improvements, such as blocks, streets, and buildings, should be located.

149. If, in running the exterior lines of a claim, the survey is found to conflict with the survey of another claim, the distances to the points of intersection, and the courses and distances along the line intersected from an established corner of such conflicting claim to such points of intersection, should be described in the field notes: *Provided*, That where a corner of the conflicting survey falls within the claim being surveyed, such corner should be selected from which to give the bearing, otherwise the corner nearest the intersection should be taken. The same rule should govern in the survey of claims embracing two or more locations the lines of which intersect.

150. A lode and mill-site claim in one survey will be distinguished by the letters A and B following the number of the survey. The corners of the mill site will be numbered independently of those of the lode. Corner No. 1 of the mill site must be connected with a corner of the lode claim as well as with a corner of the public survey or United States location monument.

151. When a placer claim includes lodes, or when several contiguous placer or lode locations are included as one claim in one survey, there must be given to the corners of each location constituting the same a separate consecutive numerical designation, beginning with corner No. 1 in each case.

152. Throughout the description of the survey, after each reference to the lines or corners of a location, the name thereof must be given, and if unsurveyed, the fact stated. If reference is made to a location included in a prior official survey, the survey number must be given, followed by the name of the location. Corners should be described once only.

153. The total area of each location and also the area in conflict with each intersecting survey or claim should be stated. But when locations embraced in one survey conflict with each other such conflicts should only be stated in connection with the location from which the conflicting area is excluded.

154. It should be stated particularly whether the claim is upon surveyed or unsurveyed public lands, giving in the former case the quarter section, township, and range in which it is located, and the section lines should be indicated by full lines and the quarter-section lines by dotted lines.

155. The title-page of the field notes must contain the post-office address of the claimant or his authorized agent.

156. In the mineral surveyor's report of the value of the improvements all *actual* expenditures and *mining* improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

157. The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of lode mining claims held in common may be based are available toward meeting the statutory provision requiring an expenditure of five hundred dollars as a basis for patent as to all of the claims of the group situated in close proximity to such common improvement. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of and actually facilitate the extraction of mineral from the claim.

158. All mining and other improvements claimed will be located by courses and distances from corners of the survey, or from points on the center or side lines, specifying with particularity and detail the dimensions and character of each, and the improvements upon each location should be numbered consecutively, the point of discovery being always No. 1. Improvements made by a former locator who has abandoned his claim can not be included in the estimate, but should be described and located in the notes and plat.

159. In case of a lode and mill-site claim in the same survey the expenditure of five hundred dollars must be shown upon the lode claim.

160. If the value of the labor and improvements upon a mineral claim is less than five hundred dollars at the time of survey the mineral surveyor may file with the surveyor general supplemental proof showing five hundred dollars expenditure made prior to the expiration of the period of publication.

161. The mineral surveyor will return with his field notes a preliminary plat on blank sent to him for that purpose, protracted on a scale of two hundred feet to an inch, if practicable. In preparing plats the

top is north. Copy of the calculations of areas by double meridian distances and of all triangulations or traverse lines must be furnished. The lines of the claim surveyed should be heavier than the lines of conflicting claims.

162. Whenever a survey has been reported in error the surveyor may, in the discretion of the surveyor general, be required promptly to make a thorough examination upon the premises and report the result, under oath, to the surveyor general's office. In case he finds his survey in error he will report in detail all discrepancies with the original survey and submit any explanation he may have to offer as to the cause. If, on the contrary, he should report his survey correct, the surveyor general will, if necessary, order a joint survey to settle the differences with the surveyor who reported the error. A joint survey must be made within ten days after the date of order, unless satisfactory reasons are submitted, under oath, for a postponement. The field work must in every sense of the term be a *joint* survey, and not a separate survey, and the observations and measurements taken with the same instrument and chain, previously tested and agreed upon.

Nothing contained in the foregoing paragraph shall be construed as intending to invest surveyors general with jurisdiction to try and determine purely adverse claims to mining ground, and the procedure herein prescribed shall not be resorted to in any case where it is apparent that the controversy is not one concerning the professional efficiency of the surveyor, or the accuracy of results achieved by the methods employed by him in the execution of the survey, but relates substantially to the relative merits of rival claims to the same parcel of ground.

163. The mineral surveyor found in error, or, if both are in error, the one who reported the same, will make out the field notes of the joint survey, which, after being duly signed and sworn to by both parties, must be transmitted to the surveyor general's office.

164. Inasmuch as amended surveys are ordered only by special instructions from the General Land Office, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject matter to be embraced in the field notes thereof, but few general rules applicable to all cases can be laid down.

The expense of amended surveys, including amendment of plat and field notes, and office work in the surveyor general's office will be borne by the claimant.

165. The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

166. The field notes of the amended survey must be prepared on the same size and form of blanks as are the field notes of the original

survey, and the word "amended" must be used before the word "survey" wherever it occurs in the field notes.

167. Mineral surveyors are required to make full examinations of all placer claims at the time of survey and file with the field notes a descriptive report, in which will be described—

(a) The quality and composition of the soil, and the kind and amount of timber and other vegetation.

(b) The *locus* and size of streams, and such other matter as may appear upon the surface of the claims.

(c) The character and extent of all surface and underground workings, whether placer or lode, for mining purposes, locating and describing them.

(d) The proximity of centers of trade or residence.

(e) The proximity of well-known systems of lode deposits or of individual lodes.

(f) The use or adaptability of the claim for placer mining, and whether water has been brought upon it in sufficient quantity to mine the same, or whether it can be procured for that purpose.

(g) What works or expenditures have been made by the claimant or his grantors for the development of the claim, and their situation and location with respect to the same as applied for.

(h) The true situation of all mines, salt licks, salt springs, and mill sites which come to the surveyor's knowledge, or a report by him that none exist on the claim, as the facts may warrant.

(i) Said report must be made under oath and duly corroborated by one or more disinterested persons.

168. The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

169. The field work must be accurately and properly performed and returns made in conformity with the foregoing instructions. Errors in the survey must be corrected at the surveyor's own expense, and if the time required in the examination of the returns is increased by reason of neglect or carelessness, he will be required to make an additional deposit for office work. He will be held to a strict accountability for the faithful discharge of his duties, and will be required to observe fully the requirements and regulations in force as to making mineral surveys. If found incompetent as a surveyor, careless in the discharge of his duties, or guilty of a violation of said regulations, his appointment will be promptly revoked.

CLAY TALLMAN, *Commissioner*.

Approved:

ANDRIEUS A. JONES,

First Assistant Secretary.

APPENDIX.

INSTRUCTIONS UNDER ACTS OF JUNE 22 AND 25, 1910, AND MARCH 3, 1909.

DEPARTMENT OF THE INTERIOR,
Washington, March 6, 1911.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: The act of June 25, 1910 (36 Stat., 847), provides that the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including Alaska, and reserve the same for water-power sites, irrigation, classification, or other public purposes, to be specified in the orders of withdrawal, such withdrawal to remain in force until revoked by him or by an act of Congress.

Section 2 of the act¹ provides that lands so withdrawn shall at all times be open to exploration, discovery, occupancy, and purchase under the mining laws, excepting those relating to coal, oil, gas, and phosphates, there being a further provision, however, to the effect that the order of withdrawal shall not impair or affect the rights of any person who, prior to the date of the withdrawal, is a *bona fide* occupant or claimant of oil or gas bearing lands, and who at such date is in diligent prosecution of work leading to the discovery of oil or gas. No hard or fast rule can be established fixing the amount of work which must have been done by the occupant prosecuting work leading to the discovery of oil or gas. Each case must rest upon its own showing of diligence when application for patent is filed.

The chief of field division should be advised of all such applications and should be prepared to submit showing, if possible, before the issuance of final certificate of entry.

This section contains further provision to the effect that there shall be excepted from the force and effect of any withdrawal all lands which are on the date of withdrawal embraced in any lawful homestead, or desert-land entry theretofore made or upon which any valid settlement has been made, and is at that time being maintained and perfected pursuant to law. Applications to make nonmineral entries by settlers claiming the benefits of the above-mentioned provisions of section 2 will be referred to the chief of the appropriate field division for investigation and report before final action is taken thereon.

Withdrawals provided for under this act include those made for the purpose of classifying coal lands, and it seems that after the

¹ Sec. 2 amended by act of Aug. 24, 1912, to permit exploration, location, and purchase of lands containing metalliferous minerals only. See pp. 32, 33.

passage of this act the previous coal withdrawals were renewed thereunder.

The act of March 3, 1909 (35 Stat., 844), is for the protection of surface rights of nonmineral entrymen where the lands were subsequently classified, claimed, or reported as being valuable for coal, and the act of June 22, 1910 (36 Stat., 583), provides for the allowance of certain nonmineral entries for land having been withdrawn or classified as coal lands. These acts have separated the surface from the coal deposits for the purpose of allowance of certain nonmineral entries, and it is not believed that the act of June 25, 1910, under consideration was intended to repeal said acts. Therefore, where applications are presented to make final proof on nonmineral entries made prior to withdrawal, for the purposes of classifying the coal deposits, the disposition of such applications should be made with especial reference to the provisions of the act of March 3, 1909, supra, and as to such lands certain nonmineral entries may be allowed, as provided for by the act of June 22, 1910, supra, notwithstanding their withdrawal under act of June 25, 1910.

Mineral applications for mining claims perfected upon oil, gas, or phosphate lands prior to withdrawal, or for such claims upon lands chiefly valuable for other minerals, whether perfected before or after withdrawal, or for claims of the latter class within power-site withdrawals, and applications to submit final proof upon homestead, desert-land, and settlement claims initiated prior to a withdrawal, will be referred to the chief of field division, with the appropriate notation of the character of the withdrawal involved, in accordance with the practice under paragraphs 5 et seq. of the circular of April 24, 1907, supra, for field examination and full report of all facts touching the character of the land and affecting the validity of the location, claim, or entry, as the case may be, including the possibility of water-power development, if any.

In the administration of the act hereunder you will also be governed by the circular approved January 27, 1911, relative to cooperation between the Geological Survey and the General Land Office.

It is believed that the foregoing will enable you to properly advise the local officers in all matters necessary to put this act into operation; and where an application is received not specifically provided for herein, you will act upon the same, affording aggrieved parties the usual right of appeal.

Very respectfully,

R. A. BALLINGER,
Secretary.

MODIFICATION OF OUTSTANDING ORDERS OF WITHDRAWAL.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 21, 1912.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: Your attention is called to the act of Congress approved August 24, 1912 (37 Stat. L., 497), amending section 2 of the act of Congress approved June 25, 1910 (36 Stat., 847).

You will note that the provision of the said act of June 25, 1910, that all lands withdrawn under the provisions of that act shall, at all times, be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, "so far as the same apply to minerals other than coal, oil, gas, and phosphates," is changed by the amendment, so as to provide that such lands shall, at all times, be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, "so far as the same apply to metalliferous minerals." By the approval, on August 24, 1912, of the said act, all outstanding orders of withdrawal under the act of June 25, 1910, were modified to conform to the act approved June 25, 1910, as amended by the act of August 24, 1912; and, upon the approval of said last-named act, the lands embraced in such orders of withdrawal ceased to be and are not open to exploration, discovery, occupation, or purchase under the mining laws of the United States, except for metalliferous minerals.

These instructions are in addition and supplementary to instructions of March 6, 1911 (36 L. D., 544).

You will exercise care in the enforcement of this important modification of the withdrawal orders.

Very respectfully,

FRED DENNETT,
Commissioner.

Approved:

SAMUEL ADAMS,
First Assistant Secretary.

RULE 7, CIRCULAR OF APRIL 24, 1907, AMENDED.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 30, 1913.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: Rule 7 of the circular of April 24, 1907 (35 L. D., 681, 682), is hereby amended so as to read:

When copy of notice is returned with indorsement not protesting the validity of the entry, the register and receiver will act upon the merits of the proof as submitted.

Where returned notice by chief of field division or other officer protests the validity of the entry, the register and receiver will forward all papers to this office without action, except in cases of mineral applications for patent. In mineral applications for patent the proof should be considered upon its merits, and, if found regular, certificate issued, although a protest may have been filed; but the claimant should be advised in such a case that patent will be withheld by the General Land Office pending a report by the chief of field division upon the *bona fides* of the claim.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

PATENTS FOR OIL LANDS IN WITHDRAWN AREAS—ACT OF
AUGUST 25, 1914.

[Instructions.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 20, 1914.

The SECRETARY OF THE INTERIOR.

Sir: I beg to submit herewith for your consideration and approval proposed instructions and forms of application and agreement for use under the act of August 25, 1914 (38 Stat. L., 708), authorizing the Secretary of the Interior, under certain conditions in the act provided, to enter into agreements with the applicants for patents for oil lands in withdrawn areas pending determination of title.

The papers submitted consist of (a) form of application, (b) instructions, and (c) form of agreement. It is intended if these instructions and forms are approved to print same entirely on one double sheet of paper.

I have the honor to recommend the approval of the papers submitted.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved, November 21, 1914.

A. A. JONES,
First Assistant Secretary.

APPLICATION FOR AGREEMENT UNDER THE ACT OF AUGUST 25, 1914 (38 STAT.
L., 708).

-----, 191 .

The undersigned, -----, hereby applies for an
(Name of applicant.)

agreement or contract with the Secretary of the Interior for the disposition of oil and gas from the lands hereinafter described, as authorized under the act of Congress, approved August 25, 1914 (38 Stat., 708). In support of said application this applicant respectfully represents as follows, which representations the said applicant hereby warrants to be true and correct.

1. That ----- is the identical person or corporation, who under date of
(He or it.) ----- filed in the local land office at -----,
State of -----, mineral application, serial number ----- for the
----- placer claim, embracing -----
of section -----, township -----, range -----, in the ----- land
district, State of -----

2. That the applicant desires the contract or agreement herein applied for to embrace the following-described lands: -----

3. That oil or gas was discovered, or was being produced, upon the lands covered by this application on or before August 25, 1914, or drilling operations were in actual progress on October 3, 1910.

(Strike out whichever is not appropriate.)

4. That, so far as known to applicant, the following enumerated persons or corporations are the only ones claiming any right, title, or interest in and to said lands or any portion thereof, or to the oil or gas produced therefrom, and their respective interests are herein set forth.

Name.

Interest.

(A fuller statement of interest may be attached if desired.)

5. That the number of wells being operated on the land covered by this application for an agreement or contract is _____ and the approximate daily gross production of each well at the present time is as follows: _____

6. That contracts for the sale and purchase of the oil and gas products arising from the operations to be carried on under the agreement herein applied for, on the lands covered thereby, have been entered into with the following and no others: _____

Duly authenticated copy of each of said contracts is hereto attached and made a part of this application.

7. That the portion of the gross proceeds arising from the sale of the oil and gas which is to be placed in escrow during the life of the contract or agreement herein applied for, will be deposited in the _____ Bank.

(Must be a national bank.)

There is hereto attached a statement by the _____ of said

(Officer.)

bank which sets forth the rate of interest to be allowed on said escrow deposit and the method by which said interest is to be computed.

8. That there are hereto attached duly executed waivers by each and every one of the parties claiming an interest as specified in paragraph four, releasing the United States from any claim or demand whatsoever arising from the execution of this agreement by the Secretary of the Interior.

(Name of applicant.)

(Corporate seal if corporation be the applicant.)

(Address.)

_____ being first duly sworn, deposes and says he is the _____ named in the foregoing application; that he has read the foregoing application and knows the contents thereof and that the facts therein stated are true according to the best of his knowledge, information, and belief.

Subscribed and sworn to before me this _____ day of _____

Notary Public.

INSTRUCTIONS.

1. This application can be made and the contract executed only by an applicant for mineral patent for oil or gas lands embraced in an order of withdrawal.

2. The application and the contract must be executed in triplicate and filed in the local land office in the district in which the lands are situated. One set only of the exhibits accompanying the application need be authenticated, but the others must be true copies.

3. In the option of the applicant, the application and contract may cover all the land embraced in the application for patent or one or more legal subdivisions thereof.

4. The form of waiver provided for in section 8 of the application must be absolute and unconditional, and if by a corporation, proper evidence of authority for the execution of such instrument must be attached.

5. Immediately upon filing of the application and contract, properly executed, the register and receiver will assign to them the same serial number that the application for patent bears and will forthwith transmit them by special letter to the Commissioner of the General Land Office.

AGREEMENT.

Under Act of August 25, 1914 (38 Stat. L., 708), for disposition of oil and gas products pending determination of proceedings for patent.

This agreement made and entered into by and between the Secretary of the Interior, acting for and in behalf of the United States, party of the first part, and _____, hereinafter called the applicant, party of the second part:

Witnesseth, That for and in consideration of the attached application and of the mutual covenants and agreements hereinafter provided, and the rights and privileges hereby granted, the parties hereto agree as follows:

1. That this agreement is made on the basis of the statements and representations made by the applicant in the attached application, which statements and representations the applicant warrants to be true and correct; it being further agreed that in case such statements and representations shall be found by the Secretary of the Interior to be untrue or incorrect in any material respect, such finding shall render this agreement subject to cancellation by said Secretary at his option and on notice to the party of the second part.

2. That commencing on the date of this agreement, and continuing for the period pending the determination by the Secretary of the Interior of the title to the land embraced in the attached application, or such other disposition of the same as may be authorized by law, under the rules, regulations, and practice of the land department of the United States, said applicant and all persons claiming by, through, or under him, as indicated in the attached application, shall be authorized to work and operate in and upon said lands for the production of oil and gas therefrom, in the manner and on the terms and conditions herein provided and not otherwise.

3. That the applicant shall conduct all drilling, pumping, and other operations for the production, storage, and sale of the oil and gas products from said land in workmanlike manner in accordance with approved practices and methods of operation for the prevention of waste or damage to said lands, or to other lands, for oil and gas producing purposes; and to this end applicant agrees to comply promptly and at his own expense with all reasonable rules, regulations, and requirements of the said Secretary of the Interior, his duly authorized agents and representatives, for the prevention of damage and waste as aforesaid.

4. That all of the oil and gas products of a marketable character arising from the operations provided for in the last preceding paragraph shall be sold and disposed of in accordance with the contract or contracts for the sale and purchase of such products submitted with, and as a part of, the attached application, or such other contract or contracts as may hereafter be entered into with the approval of the Secretary of the Interior.

5. That one-eighth of the gross proceeds arising from the sale of such oil and gas products, as provided in the preceding paragraph, shall be deposited by the purchaser or purchasers thereof, in the national bank designated in said application, to be held by said bank in escrow, as in this contract provided, such payments to be made monthly on or before the tenth day of each month for all oil and gas sold during the preceding month; the balance (seven-eighths of such gross proceeds) shall be paid to the party or parties entitled thereto; full and detailed statements of accounts of sales and purchases, as aforesaid, shall be made by said purchaser in triplicate, one to accompany the payment to said bank, one to the Chief of Field Division of the General Land Office in whose division said land is situated, and one to the party of the second part.

6. That said portion of the gross proceeds, to be deposited in said bank in escrow, as provided in the last preceding paragraph, shall be subject to change by the Secretary of the Interior at any time on 30 days' notice: *Provided*, That in case such portion shall be increased, it shall be optional with the second party to continue under this agreement: *Provided further*, That notice to discontinue operations hereunder shall be filed in the proper United States Land Office within 10 days after the receipt of notice of such increased amount to be deposited in escrow.

7. That all interest accruing on the portion of such gross proceeds, deposited in said bank in escrow as aforesaid, shall be added to the principal at regular intervals in accordance with the previous understanding with said bank as indicated in the attached application; that in case the land department of the United States shall finally determine that under the law, rules, and regulations

controlling the granting of patents to mineral lands, said second party is entitled to a patent to the land and premises described and applied for in said mineral application and embraced by this contract, then and in that case, on the issuance of said patent the Secretary of the Interior shall so certify to said bank, whereupon said bank shall be authorized and deemed instructed by the parties hereto, to pay over all moneys deposited therein under the terms hereof, with accumulated interest, to the second party; but in case the land department of the United States shall finally determine, in accordance with the law, its rules, regulations, and practice, that the second party is not entitled to patent for the lands and premises embraced in this agreement, and same shall be finally rejected, then on receipt of the certificate of the Secretary of the Interior to that effect said bank shall be authorized, and it shall be deemed to be instructed by the parties hereto, to pay over all of said payments and accrued interest to the Treasurer of the United States, whereupon all and every claim, right, title, or interest in said funds and accumulated interest, either on the part of the second party or any person claiming by, through, or under him, shall cease and terminate; in either of the cases above described, operations under this contract shall cease and terminate on the issuance of the certificate of the Secretary of the Interior as aforesaid; but in case this contract shall, under any of the provisions hereof, be canceled prior to the final determination of the matter of said application for patent, any moneys theretofore deposited in escrow shall nevertheless remain so deposited until said application for patent shall be finally approved or rejected.

8. That in case a portion of the land embraced in this agreement shall be finally patented to applicant, and patent shall be denied for the remainder thereof, then such escrow deposits and accumulated interest hereinabove provided for shall be paid to the applicant and to the Treasurer of the United States in such proportion as the area patented shall bear to the area for which patent shall be denied, as shown to said bank by the certificate of the Secretary of the Interior.

9. That the said purchaser of the oil and gas products and the said bank shall be furnished with copies hereof by the party of the first part, and same shall be deemed and constitute joint instructions to them respectively in so far as applicable.

10. That all the workings, operations, premises, equipment, books, and records of the second party, or any person claiming by, through, or under him, pertaining to, or included in, the subject matter of this agreement, shall, at all times, be subject to inspection by the authorized representatives of the Department of the Interior, and such books, records, and accounts shall be kept and such reports made as the first party by the Secretary of the Interior or his authorized representatives shall, from time to time, direct.

11. Such deposits in escrow, when paid over to the Treasurer of the United States as herein provided, shall be and constitute full and complete payment, settlement, accord, and satisfaction of all claims of the United States for trespass for any and all oil and gas removed from said premises during the period of, and under and subject to, this agreement, as against the applicant, producer or purchaser of such oil or gas products, who shall have in good faith and without collusion done and performed each and every act herein required to be performed by him or it strictly in accordance with this agreement, even though said application for patent shall be denied.

12. That this contract shall be binding on the heirs, assigns, and legal representatives of the second party hereto.

13. That in no case and under no circumstances or conditions shall the United States become liable to any person whatsoever under or by reason of this contract, or any of its provisions.

14. That failure or default on the part of the second party to comply strictly with the terms hereof shall render this contract subject to cancellation by the Secretary of the Interior at his option immediately on notice of such cancellation to the second party, and the decision of the said Secretary shall be final on the question of the existence of such failure or default.

15. That no Member of or Delegate to Congress, or Resident Commissioner, or officer or employee of the Department of the Interior, is or shall be admitted to any share or part in this agreement, or derive any benefit which may arise therefrom, and the provisions of section 3741 of the Revised Statutes of the United States, and sections 114, 115, and 116 of the Codification of the Penal

Laws of the United States, approved March 4, 1909 (35 Stat., 1109), relating to contracts, enter into and form a part of this agreement, so far as the same may be applicable.

In witness whereof, the said parties hereto have caused the execution of these presents by themselves or by their duly authorized officers, agents, or representatives, as of the _____ day of _____, 191__

Secretary of the Interior.

ACKNOWLEDGMENT OF INDIVIDUAL.

State of _____ }
County of _____ } ss:

Before me, a notary public, in and for said county and State, on this _____ day of _____, 191 , personally appeared _____, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

Notary Public.

(My commission expires _____.)

ACKNOWLEDGMENT OF CORPORATION.

State of _____ }
County of _____ } ss:

On this _____ day of _____, A. D. 191 , before me, a _____ within and for the _____ and _____ aforesaid, personally appeared _____ and _____ to me personally known, who, being by me duly sworn, did each say that _____ is the _____ president and _____ is the _____ secretary of _____, a corporation, and that the seal affixed to the foregoing and annexed instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and said _____ and _____ duly acknowledged that they each had in their said official capacities executed the foregoing instrument as the act and deed of the said company for the consideration and purposes therein mentioned and set forth.

Witness my hand and official seal this _____ day of _____, 191 .

(My commission expires _____.)

REGULATIONS UNDER THE ACT OF JULY 17, 1914 (38 STAT., 509), PROVIDING FOR AGRICULTURAL ENTRIES ON PHOSPHATE, OIL, AND CERTAIN OTHER MINERAL LANDS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 20, 1915.

REGISTERS AND RECEIVERS,
United States Land Offices.
(Exclusive of Alaska.)

SIRS: The following regulations are for the guidance of yourselves and the public in matters affected by the act of Congress approved July 17, 1914 (38 Stat. L., 509), entitled "An act to provide for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals."

SCOPE OF THE ACT.

(1) The legislation is general and comprehensive, and operates in all the States containing public lands of the character specified. It does not apply to lands in the Territory of Alaska, or to lands in the United States which for other reasons are not available or which, in other words, are not subject to entry. This statute fully covers the field included in the special acts of August 24, 1912 (37 Stat., 496), providing for certain agricultural entries and selections on oil and gas lands in the State of Utah, and of February 27, 1913 (37 Stats., 687), authorizing selections by the State of Idaho of phosphate and oil lands in that State. This broad and general act supersedes and displaces said special laws, and by implication works their repeal. Therefore, all entries, selections, or locations of lands of the character described in those special statutes made in the States mentioned on or after date of this general act (July 17, 1914) will be treated as within the scope of the latter act, and will be adjudicated thereunder. Also, all such entries, selections, or locations made under those special acts prior to, and not perfected at, that date will be carried to completion, approved, and patented, if at all, under the general act.

(2) Section 1 of the act authorizes the appropriation, location, selection, entry, or purchase under the nonmineral land laws of the United States, if otherwise available, of lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for such deposits, whenever such lands are sought with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn, classified, or reported as valuable, together with the right to prospect for, mine, and remove the same. Any form of appropriation under the proper applicable nonmineral land laws is authorized, with a reservation of the minerals as specified, to the

same extent as if no withdrawal or classification had been made. The only exception is that no desert-land entry made under the act shall contain more than 160 acres.

The term "person" used in this act will be interpreted as covering a State (see *Ex parte*, Utah, 38 L. D., 245), or other corporation, or an association when duly qualified.

Under the proviso in section 2 of the act applications for land, either withdrawn or classified, may be presented with a view of proving that the lands applied for, if withdrawn, are not of the character intended to be included in the withdrawal, or, if classified, of disproving the classification and securing patent free from reservation; also, claimants for lands withdrawn or classified for the specified minerals *subsequent* to location, selection, entry, or purchase have the privilege of showing at any time before final entry, purchase, or approval of selection or location that the lands sought are, in fact, nonmineral in character.

(3) This act in many respects resembles that of March 3, 1909 (35 Stat., 844), which provides for the protection of the surface rights of entrymen upon lands subsequently classified, claimed, or reported as coal lands, and also, that of June 22, 1910 (36 Stat., 583), authorizing certain forms of agricultural entries and selections on withdrawn or classified coal lands. The general instructions under these acts of September 7, 1909 (38 L. D., 183); September 8, 1910 (39 L. D., 179); May 23, 1912 (41 L. D., 30); and June 14, 1912 (41 L. D., 89), may be followed, so far as applicable, in matters of practice and procedure not specifically covered by these regulations.

(4) Section 3 of the act is both retrospective and prospective, and under it any person who, prior to the act, had applied, or who after the passage of the act, shall apply for lands which are subsequently withdrawn, classified, or reported as being valuable for the specified minerals, and which are otherwise available, may upon application therefor, and the making of satisfactory proof, receive a patent with a reservation. In this particular, the statute is quite similar to that of March 3, 1909, above referred to, and the disposition of such cases will follow the practice under that act in so far as the same is applicable.

APPLICATIONS.

(5) All applications to locate, select, enter, or purchase lands under this act, before being accepted and filed by you, must have written, stamped, or printed upon their face, the following: "Application made in accordance with, and subject to, the provisions and reservations of the act of July 17, 1914 (38 Stat., 509)."

Like notations will be made by registers upon the face of the notices of allowance issued on applications filed under this act.

Orders of withdrawal under the reclamation act of lands withdrawn, classified, or reported as valuable for the specified minerals with a view to passing title to the same in accordance with the terms of this act, will state that such withdrawal is made in accordance with and subject to the provisions and reservations of the act of July 17, 1914 (38 Stat., 509).

FINAL CERTIFICATES AND PATENTS.

(6) Final certificates issued to nonmineral claimants under this act will contain the following provision, which you will cause to be written or stamped thereon:

Patent to contain provisions, reservations, conditions, and limitations of the act of July 17, 1914 (38 Stat., 509).

There will be incorporated in patents issued to nonmineral claimants under this act the following:

Excepting and reserving, however, to the United States all the [deposit on account of which the lands are withdrawn, classified, or reported as valuable—phosphate, oil, or other mineral, as the case may be] in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the act of July 17, 1914 (38 Stat., 509).

NOTATION OF RECORDS.

(7) Upon the acceptance by you of any filing under this act, you will make appropriate notation of your records to show that the filing was made under the provisions thereof; and upon the ascertainment (which will be noted of record) that the nonmineral locator, selector, entryman, or purchaser whose filing falls within the provisions of section 3 of the act, shall receive the limited patent prescribed therein, you will cause to be written or stamped on your tract books, in line with the notation of the entry and as near the description as practicable that the mineral deposits (phosphate, oil, etc., as the case may be) are reserved to the United States, act of July 17, 1914. You will make a similar notation on the margin of the township plat, giving description of the land in which the deposits have been reserved.

RESERVED MINERAL DEPOSITS.

(8) The act provides that the deposits reserved in agricultural patents issued thereunder shall be "subject to disposal by the United States only as shall be hereafter expressly directed by law." Although provisions are made in the act for the protection of the surface owner against damage to his crops and improvements on the land by reason of prospecting for, mining, and removing such reserved mineral deposits, these provisions can have no operation or effect until further legislation by Congress shall authorize disposition of the reserved mineral deposits and define the qualifications of those who may acquire such deposits. In the meantime there is no right to prospect, and no right to acquire such deposits can be in any way initiated.

CLAIMANTS OF LANDS SUBSEQUENTLY WITHDRAWN.

(9) The enactment of the law itself and the publicity given to orders of withdrawal and classifications and the notation of the same upon the records of the local offices, will be sufficient notice to such

nonmineral claimants as are or may be affected by withdrawals or classifications made, or which shall be made, subsequent to their locations, selections, entries, or purchases, that they must take the limited patent prescribed by the act, upon submission of satisfactory proof of compliance with the laws under which they claim, unless the withdrawal be revoked or the classification set aside prior to the issuance of patent, or unless they show that the lands embraced in their claims are in fact nonmineral.

APPLICATIONS TO DISPROVE CLASSIFICATIONS.

(10) (a) The proviso to section 2 of the act allows any qualified person to present an application to locate, select, enter, or purchase, under the land laws of the United States, lands which are withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, with a view to obtaining a patent thereunder without reservation. An applicant under this proviso must submit with his application a request for a classification of the land as nonmineral, filing therewith a showing, preferably the sworn statements of experts or practical miners, of the facts upon which is founded the knowledge or belief that the land applied for is not valuable for the mineral on account of which it was withdrawn or classified.

Applications to locate, select, enter, or purchase lands so withdrawn or classified, which are not filed under the provisions of section 1 of the act, and are not accompanied by request for classification as nonmineral of the land applied for, and the evidence required herein to be filed with such request, will be rejected by you, and the applicant allowed 30 days from notice within which to amend his application to take a limited patent for the land in accordance with and subject to the provisions of the act, or to file request for classification thereof as nonmineral, accompanied by the necessary evidence.

Such applications will be given proper serial numbers, noted upon your records, and forwarded, together with the request for classification and the evidence submitted therewith, to the General Land Office for action.

If upon the showing made, and such other inquiry as may be deemed proper, a restoration of the land, where withdrawn, be secured, or a reclassification as nonmineral be made, where the land has been classified, the nonmineral application, in the absence of other objection, will be returned for allowance.

If the application be denied you will be so notified, and the applicant may, within 30 days from notice of such denial, apply to your office for a hearing to disprove the classification. When a hearing is applied for, you will notify the chief of field division and proceed therewith under the Rules of Practice. If the applicant fail to apply for a hearing within the time allowed, the application to locate, select, enter, or purchase will be finally rejected.

The rejection of the application, however, will not preclude the applicant from filing application to locate, select, enter, or purchase the land in accordance with and subject to the provisions and reservations of said act.

(b) Under this proviso, persons who have located, entered, selected, or purchased lands subsequently withdrawn or classified as valuable

for said mineral deposits, are allowed the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands are in fact nonmineral in character.

Claimants to whom this provision is applicable may, therefore, file in the proper local land office application for a classification of the land as nonmineral, together with the evidence prescribed herein to be filed by an original applicant with his request for classification, whereupon the same will be forwarded to the General Land Office for action. If as a result thereof the land be restored to entry, if withdrawn, or classified as nonmineral, if classified, you will be so informed, in order that you may note your records and advise the claimant. If the application be denied, you will be advised thereof, and the claimant allowed 30 days from notice of such denial within which to make application to your office for a hearing to establish the nonmineral character of the land. When a hearing is applied for you will notify the chief of field division and proceed therewith under the Rules of Practice.

BURDEN OF PROOF.

11. Where application is made to enter, locate, or select lands withdrawn or classified as valuable for or on account of any of the minerals specified in this act and in these regulations, the burden of proof to show that said lands are not of the character of those intended to be withdrawn, or that the classification as such was and is erroneous and improper in point of fact, will rest upon and be borne by the applicant in the event that he shall undertake to establish, at a hearing ordered and held for that purpose, the truth of the allegations made by him in that behalf.

A withdrawal or classification will be deemed *prima facie* evidence of the character of the land covered thereby for the purposes of this act. Where any nonmineral application to select, locate, enter, or purchase has *preceded* the withdrawal or classification and is incomplete and unperfected at such date, the claimant, not then having obtained a vested right in the land, must take patent with a reservation or sustain the burden of showing at a hearing, if one be ordered, that the land is in fact nonmineral in character and therefore erroneously classified or not of the character intended to be included in the withdrawal. Where the agricultural claimant has completed and perfected his claim and becomes possessed of a vested right in the land which *subsequent* thereto is withdrawn or classified, the burden will rest upon the Government to show that the land is in fact mineral in character and was so known at the date of final completion and perfection of the claim. See Charles W. Pelham (39 L. D., 201).

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

VALIDATED PLACER LOCATIONS ON PHOSPHATE LANDS—PROOFS
AND NOTICE—ACT OF JANUARY 11, 1915 (38 STAT. L., 792).

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 31, 1915.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: Your attention is directed to the act of Congress approved January 11, 1915 (38 Stat. L., 792), entitled "An act validating locations of deposits of phosphate rock heretofore made in good faith under the placer-mining laws of the United States."

The act applies only to placer-mining locations made on lands containing deposit of phosphate rock. It prescribes that phosphate placer locations made in good faith prior to the passage of the act, and prior to the withdrawal of such lands from location, upon which assessment work has been annually performed, shall be valid and may be perfected under the placer-mining laws, except as to lands included in an adverse or conflicting lode location. It authorizes the issuance of patents for such locations, where the provisions of the mining laws in other respects have been complied with.

In addition to the usual proofs claimants, under all pending and future applications based on such validated locations, must submit evidence showing that the assessment work has been annually performed up to and including the year preceding that in which the entry certificate is issued. Such proof may be made by filing the original or authenticated copies of the proofs of annual labor of record in the local recording office, provided such proofs are definite and specific. Where such evidence is not available, a sufficient corroborated affidavit, describing the nature and giving the approximate cost and reasonable value of the work done each year upon or for the benefit of each claim included in the application for patent, will be accepted. Similar proof must be furnished in support of all pending cases, where the entry certificates are outstanding, before such entries will be approved for patent, all else being regular.

The act does not apply to lands included in an adverse or conflicting lode location, unless such adverse or conflicting claim is abandoned. The usual statutory notice of the application must have been or will be given in all cases. Section 2325, Revised Statutes, provides that if no adverse claim is filed during the sixty days of publication "it shall be assumed that the applicant is entitled to a patent * * * and that no adverse claim exists."

Where proper statutory notice has been given and no adverse claim or protests has been filed, it will be conclusively assumed, for patent purposes, that no adverse or conflicting lode location exists; and that if any such once existed, it has been abandoned. No new notice, if the notice already given be found regular and sufficient, will be required in support of any pending entry or application.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

INSTRUCTIONS UNDER ACT OF JANUARY 11, 1915 (38 STAT. L., 792), PROVIDING FOR THE PURCHASE AND DISPOSAL OF CERTAIN LANDS CONTAINING THE MINERALS KAOLIN, KAOLINITE, FULLER'S EARTH, CHINA CLAY, AND BALL CLAY, IN TRIPP COUNTY, FORMERLY A PART OF THE ROSEBUD INDIAN RESERVATION, IN SOUTH DAKOTA.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 15, 1915.

REGISTER AND RECEIVER,
*United States Land Office,
Gregory, South Dakota.*

SIRS: 1. The act approved January 11, 1915 (38 Stat. L., 792), provides that all lands containing the minerals kaolin, kaolinite, fuller's earth, china clay, and ball clay, in Tripp County, in what was formerly within the Rosebud Indian Reservation in South Dakota, as have heretofore been opened to settlement and entry under acts of Congress which did not authorize the disposal of such mineral lands, shall be open to exploration and purchase and be disposed of under the general provisions of the mining laws of the United States, and the proceeds arising therefrom shall be deposited in the Treasury for the same purpose for which the proceeds arising from the disposal of other lands within the reservation in which such mineral-bearing lands are located were deposited.

2. The territory referred to in said act is that portion of the former Rosebud Indian Reservation in Tripp County, South Dakota, opened to settlement and entry by the act of March 2, 1907 (34 Stat., 1230). No mineral locations or entries may be made in said area except for lands containing the minerals described in said act of January 11, 1915.

3. Applications for patents for lands described in said act of January 11, 1915, must contain, in addition to the matter required by paragraph 60 of the mining regulations, approved March 29, 1909,¹ (37 L. D., 769), full and explicit data showing clearly that the lands sought to be patented thereunder are of the character contemplated by said act.

4. By the first proviso to said act of January 11, 1915, it is provided "that the same person, association, or corporation shall not locate or enter more than one claim, not exceeding one hundred and sixty acres in area, hereunder."

(a) Under this clause and the preceding part of the act to which it relates, which provides that the lands containing the designated mineral deposits "shall be open to exploration and purchase and be disposed of under the general provisions of the mining laws of the United States," no location or entry of a claim under said act of January 11, 1915, by a single natural person or corporation can exceed twenty acres in area and in the case of an association no location or entry can exceed twenty acres for each individual participating therein; that is, a location by two persons can not exceed forty acres, one by three persons can not exceed sixty acres, and one by eight persons can not exceed one hundred sixty acres.

¹ Now regulations of August 6, 1915, of which these instructions are a part.

(b) Rights obtained by location under the mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person, association, or corporation holding as assignee may make entry in his, their or its name: *Provided*, such person, association, or corporation has not held under said act of January 11, 1915, at any time, either as locator or entryman, any other lands; his, their or its right is exhausted by having held under said act any particular tract, either as locator or entryman, either as an individual or as a member of an association or corporation. It follows, therefore, that no application for patent or entry, made under said act, shall embrace more than one single location.

(c) In order that the conditions imposed by said first proviso may duly appear, the application for patent must contain or be accompanied by a specific statement, under oath, by each person whose name appears therein that he never has, either as an individual or as a member of an association or corporation, located, held, or entered any other lands under the provisions of said act of January 11, 1915. Where the application is by an association or corporation, it must, in like form as above provided, show that each person forming the association or holding stock in the corporation is qualified to make entry in his own right and that he is not a member of any other association or a stockholder in any other corporation which has located a claim or filed an application for other lands under the provisions of said act of January 11, 1915.

5. Said act of January 11, 1915, contains the further proviso "that none of the lands or mineral deposits, the disposal of which is herein provided for, shall be disposed of at less price than that fixed by the applicable mining or coal-land laws, and in no instance at less than their appraised value, to be determined by the Secretary of the Interior."

As soon as the register and receiver shall have filed and acted upon the mineral application for patent, and issued notice of allowance thereof they will forward to the chief of field division a duplicate of the sworn statement filed with said application for patent, which duplicate must be furnished by the mineral applicant, and, among other things, fully and accurately describe the land applied for and contain the other data herein prescribed. In the letter transmitting said duplicate sworn statement the local officers will advise the chief of field division as to the land for which the application for patent has been allowed, and the status of such land as shown by their records. Upon the receipt of these papers the chief of field division will docket the case and will promptly make, or cause to be made by a competent special agent, a personal examination of the land as to which the application for patent has been allowed and appraise said land for the purpose of determining the price at which the same shall be sold, which, however, must, in no event, be less than five dollars per acre, or fraction of an acre. The schedule of appraisement must be prepared in duplicate, and fully describe, by legal subdivisions, each ten-acre tract, examined and valued, be signed by the appraiser and be approved by the chief of field division; and, on being so completed (which must be prior to the expiration of the sixty-day period of publication of notice of application for patent), they must be at once transmitted to the register and receiver, who will immediately send,

by registered mail, one copy of the schedule of appraisement to the record address of the applicant for patent.

When the appraisement is completed, the register and receiver will note the price on their records, and thereafter the land will be sold at such price only, under the provisions of said act of January 11, 1915, in the absence of instructions to the contrary by the Commissioner of the General Land Office. If appraisement be not made and returned prior to the expiration of the period of newspaper publication and within 30 days thereafter, the applicant may, if duly qualified, and in the absence of other objections, purchase the land applied for at the minimum price—viz, five dollars for each acre and five dollars for each fractional part of an acre.

6. As to matters not covered by these regulations, you will, in general, be governed in the administration of said act of January 11, 1915, by the provisions of the United States mining laws and, so far as applicable, the regulations thereunder of March 29, 1909, and the various amendments thereof.¹

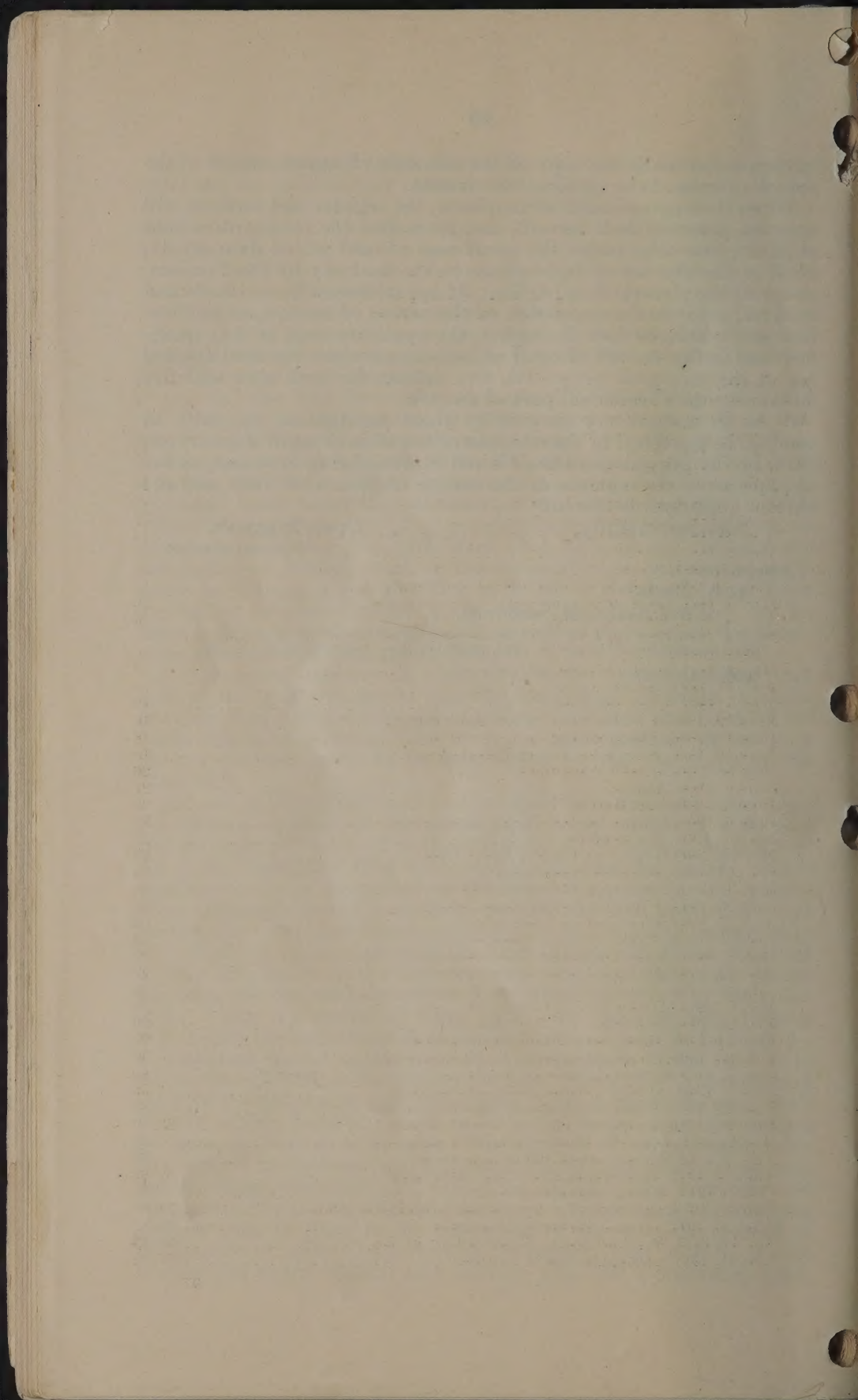
Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

A. A. JONES,
First Assistant Secretary.

¹ Now regulations of August 6, 1915, of which these instructions are a part.



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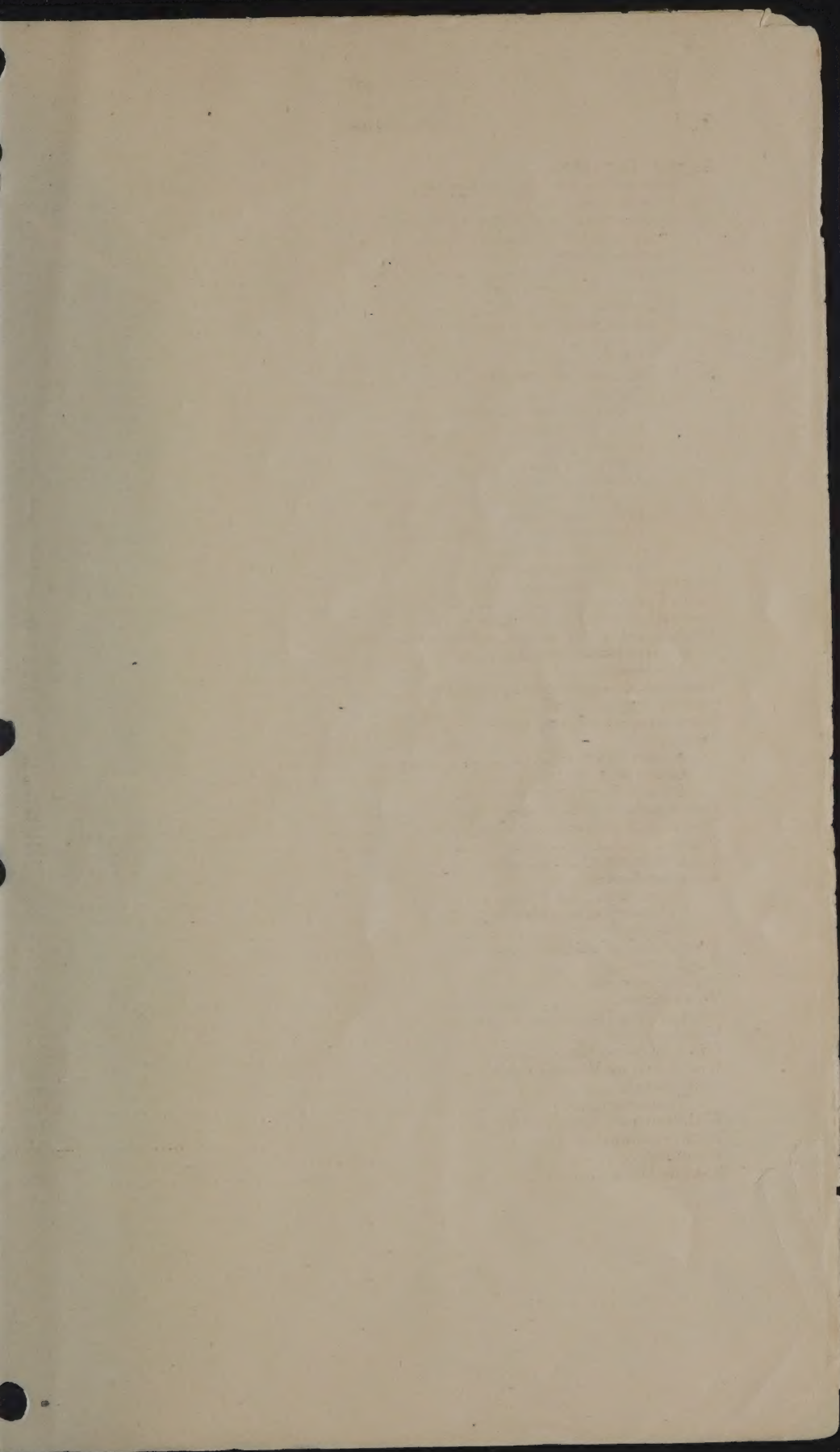
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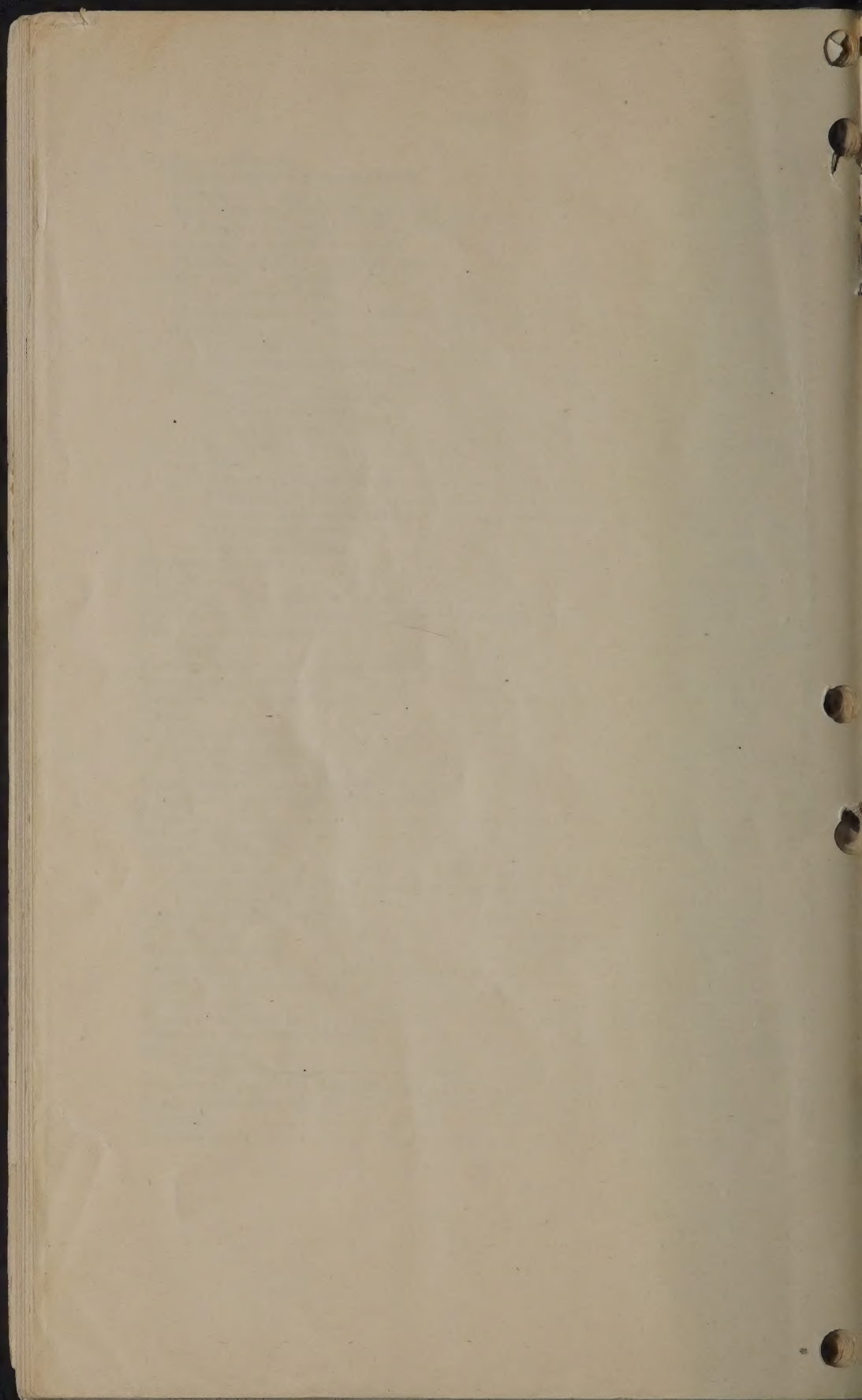
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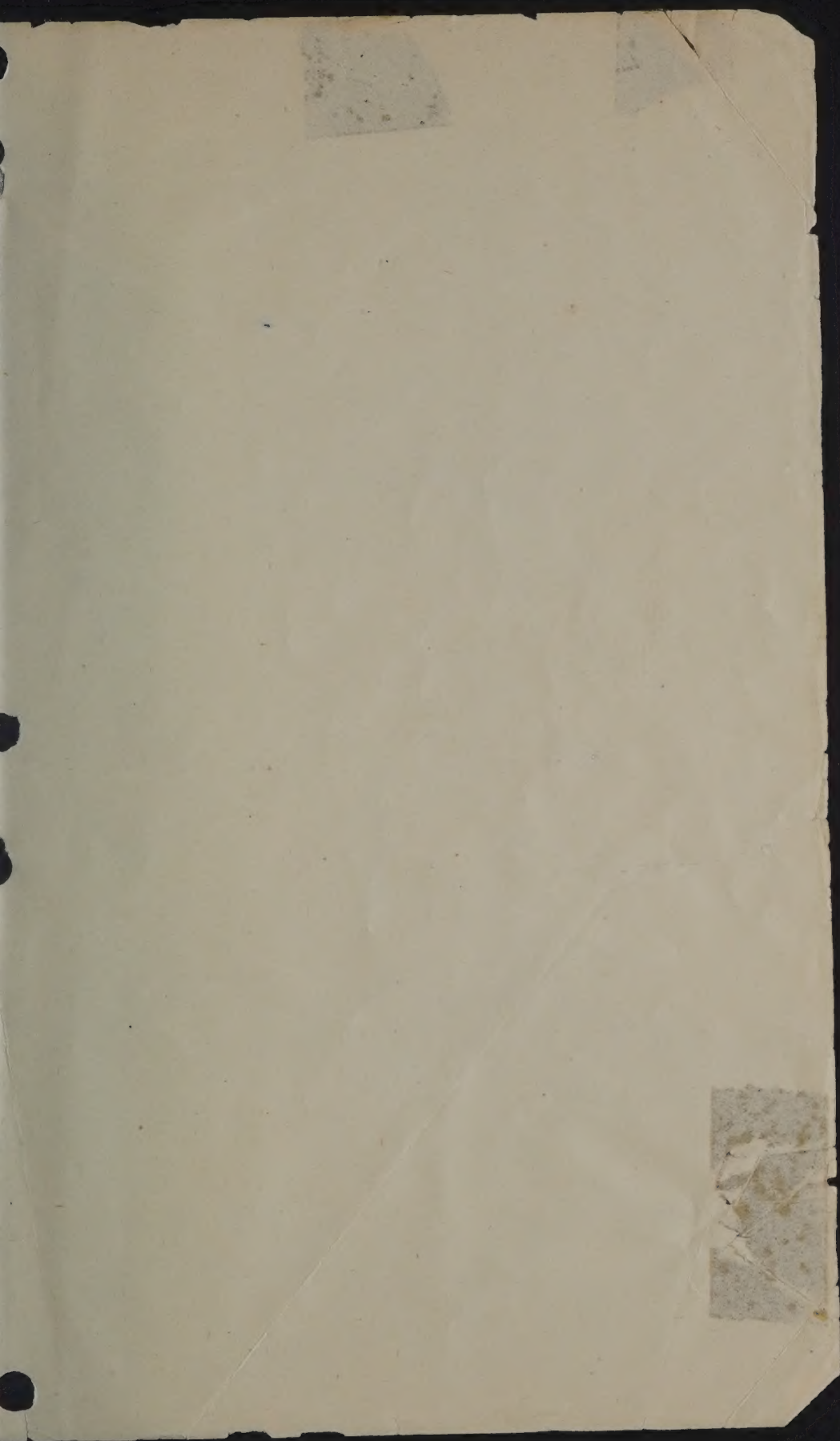
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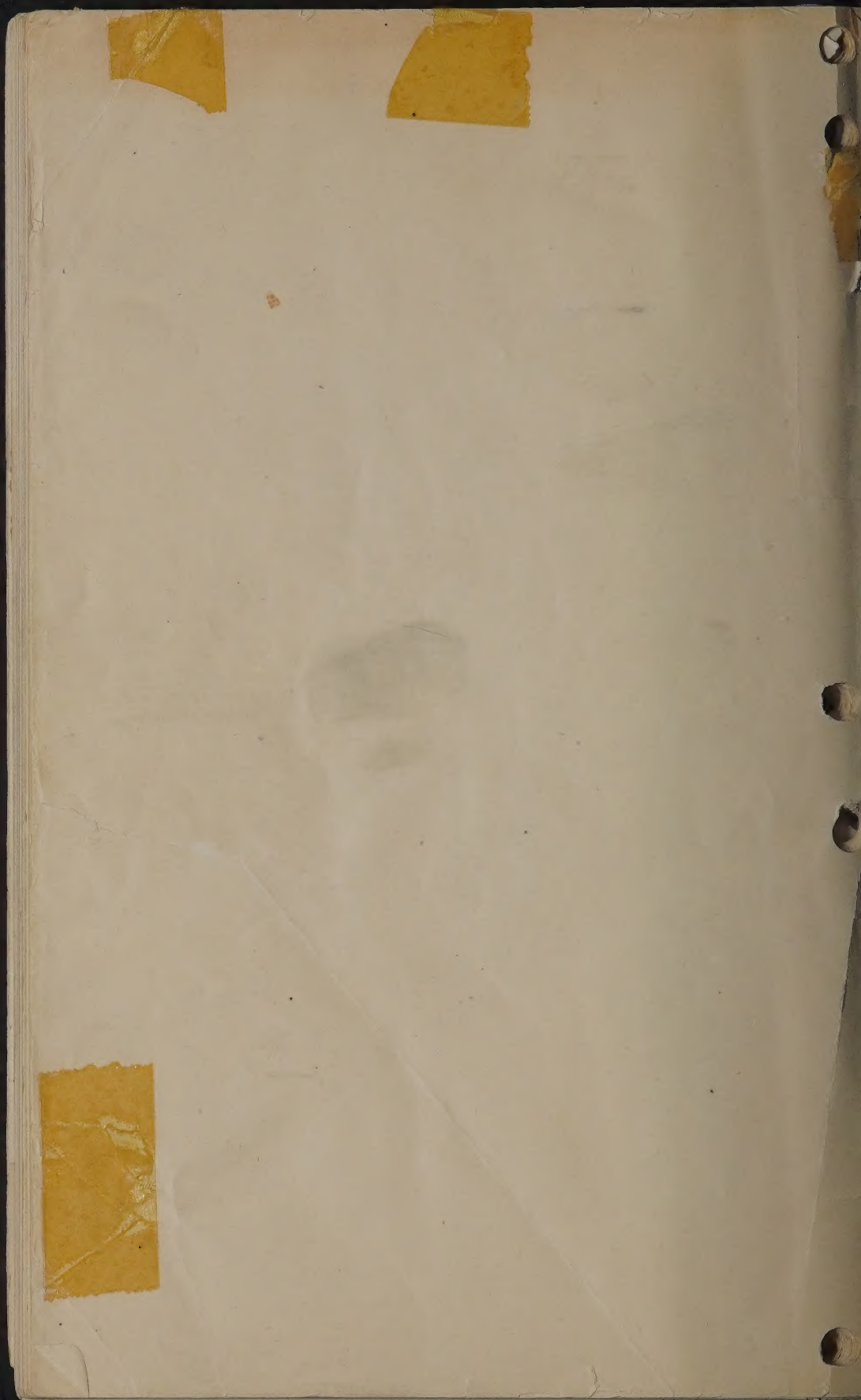
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CIRCULAR No. 431.

RULE OF PRACTICE 14 AMENDED.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 18, 1915.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: On July 2, 1915, the department amended Rule of Practice 14 to read as follows:

"Rule 14. Upon the failure to serve and file answer as herein provided, the allegations of the contest will be taken as confessed, and the register and receiver will forthwith forward the case, with recommendation thereon, to the General Land Office, and notify the parties by registered mail of the action taken."

The requirement that a contestant must file a motion for default to gain a preference right of entry is thus abrogated.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

5785°-15

CIRCULAR NO. 432.

**APPLICATIONS FOR LANDS COVERED BY ALLOTMENT
APPLICATIONS.**

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 20, 1915.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: By circular No. 337 dated July 16, 1914, you were directed to allow no allotment applications under the act of February 8, 1887 (24 Stat., 388), as amended, unless the applicant presented with the same a certificate from the Commissioner of Indian Affairs that the party named therein was entitled to allotment on the public domain.

It is presumed that no such applications have been allowed by you since the receipt of the circular in your office unless accompanied by the required certificate.

When other applications for lands embraced in an Indian allotment application are filed in your office you will reject the same, subject to appeal, if the allotment application was filed subsequent to the receipt of the said circular in your office.

If other applications are filed for lands included in an Indian allotment application which has been suspended by you, in order that opportunity may be afforded the applicant to secure the required certificate from the Indian Office or for other sufficient reason, you will suspend such other applications, noting on each the exact time and sequence of filing, and if the allotment application is finally rejected you will allow the suspended application first filed to which no other objection is found. If the allotment application is ultimately allowed you will reject, subject to appeal, all suspended applications for the land embraced in the same.

Where other applications are filed for lands embraced in an allotment application filed before you received the said circular of July 16, 1914, you will inquire of this office, if notice has not been received, whether the Commissioner of Indian Affairs has certified to the right of the applicant to receive an allotment from the public domain. If reply is received that such certification has been made, you will reject the other applications so filed, with right of appeal; but if informed that the Indian Office has found adversely to the Indian applicant, or that no report has been made, you will suspend such applications, noting on each the order of filing, as directed above, awaiting final determination of the Indian's right.

Very respectfully,

CLAY TALLMAN,
Commissioner.

7747°-15

THE UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

WATER RESOURCES DIVISION
SALT LAKE CITY, UTAH

TO: [Illegible]
FROM: [Illegible]
SUBJECT: [Illegible]
[The following text is extremely faint and largely illegible, appearing to be a memorandum or report. It contains several paragraphs of text, some of which may be related to water resources or land management.]

Very truly yours,
[Illegible Signature]

11-2

Part 2107
CFR 43.

Still in
effect
5/28/54 BB.

See case 1575

CIRCULAR No. 433.

**SUGGESTIONS TO UNITED STATES COMMISSIONERS AND JUDGES
AND CLERKS OF COURTS OF RECORD, UNDER SECTION 2294,
UNITED STATES REVISED STATUTES, AS AMENDED.**

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 23, 1915.

The following is a revision of the circular of March 24, 1905 (33 L. D., 480), the paragraphs amended being those numbered 2, 8, 9, and 10. A new paragraph 13 is inserted, and former paragraph 13 is now numbered 14.

1. No oath in support of any application, entry, proof, or claim to public lands should be administered to any stranger until he has first been reliably made known and identified to the officer administering it as the identical person he represents himself to be.

2. No jurat or certificate should be attached to any oath, affidavit, application, proof, or other written statement affecting public lands until such oath, affidavit, application, proof, or statement has been fully written out and completed, and until all blank spaces in any blank form prescribed or used therefor shall have been fully filled out or erased, and not then until after the same has been sworn to and signed by the affiant before and in the presence of the attesting officer and fully read by or made known to the affiant. No certification of papers will be recognized by the Land Department in the absence of a seal duly impressed by the officer.

3. Final proofs should in every case be made at the time and place advertised, and before the officer named in the notice, at his regularly established office or place of business, and not elsewhere. Between the hours of 8 a. m. and 6 p. m. on the day advertised the officer named in the notice should call the case for hearing, and should the claimant fail to appear with his witnesses between those hours, or the taking of the proof fail to be completed on that day, the officer should continue the case until the next day, and on that day or any succeeding day should the claimant or his witnesses fail to so appear he should proceed in like manner to continue the case from day to day until the expiration of 10 days from the date advertised, but proof can not be taken after the expiration of the tenth day. Upon continuing any case in the manner indicated the officer continuing the same should in the most effective way available give notice of such continuance to all interested parties.

4. Protestants, adverse claimants, or other persons desiring to be present at the taking of any proof for the purpose of cross-examining the claimant and his witnesses, or to submit testimony in rebuttal, should be allowed to appear for that purpose on the day advertised,

Amended by Circ 894. to be Part 210 in CFR 43.

or upon any succeeding day to which the case may be continued. If any person appears for the purpose of filing a formal protest against the acceptance or approval of the proofs or contest against the entry and does nothing more than file same, such protest or contest should be received and forwarded to the register and receiver for their consideration and action.

5. All final proofs should be reduced to writing by or in the presence of and under the supervision of the officer taking them, and in all cases where no special agent or other representative of the Government appears for the purpose of making cross-examinations the officer taking the proof should use his utmost endeavor and diligence so to examine the entryman and his witnesses as to obtain full, specific, and unevasive answers to all questions propounded on the blank forms prescribed for the taking of such proofs, and in addition to so doing he should make and reduce to writing and forward to the register and receiver with the proof such other and further rigid cross-examination as may be necessary clearly to develop all pertinent and material facts affecting or showing the validity of the entry, the entryman's compliance with the law, and the credibility of the claimant and his witnesses. And, in addition to this, he should inform the register and receiver of any facts not set out in the testimony which in his judgment, cast suspicion upon the good faith of the applicant or the validity of the entry.

6. The testimony of each claimant should be taken separate and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separate and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state in and as a part of the final proof testimony given by them that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others.

7. Officers taking affidavits and testimony should call the attention of parties and witnesses to the laws respecting false swearing and the penalties therefor and inform them of the purpose of the Government to hold all persons to a strict accountability for any statements made by them.

8. The officer who has taken a proof should, after duly certifying the papers, promptly transmit them to the register and receiver. In no case should the transmittal thereof be left to the claimant.

9. No fee in excess of 25 cents can be lawfully charged or received for administering the oath to any affidavit, application, proof, or any other written statement affecting public lands; but there is no restriction on the fee the officer may charge for preparation of any paper, except that the total amount to be received for taking and writing out the final proof testimony of a claimant or of a witness, and administering the oath thereto, shall not exceed the sum of \$1. Any officer demanding or receiving greater sums than are here specified for such services will be subject to indictment and punishment under amended section 2294 of the United States Revised Statutes.

10. No officer who takes an application, affidavit, or final proof in a case will be permitted to act as attorney therein. No United States commissioner will, while holding that office, be recognized or per-

mitted to appear as an agent or attorney for others in any matter pending before the Land Department affecting the title to public lands, nor will he be permitted to enroll himself as agent or attorney to practice before it.

11. No officer authorized to take final proofs shall, directly or indirectly, either as agent, attorney, or otherwise, in any manner or by any means cause, aid, encourage, induce, or assist any person wrongfully or illegally to acquire, or attempt to acquire, any title to, interest in, use of, or control over any public lands belonging to the United States.

12. No officer authorized to take final proofs should, either for himself or as agent, attorney, or representative of another, induce or attempt to induce any owner, entryman, or other person to purchase, sell, mortgage, exchange, lease, or relinquish any lands which are involved, may be involved, or have been involved in any affidavit, application, or proof, executed before him, and he should not, either for himself or as agent for any other person, in any manner solicit or make to any entryman, owner, or claimant any loan or attempted loan the payment of which is to be secured by a lien or mortgage upon such lands; and he should not be or remain a member or stockholder of any copartnership or company which shall, either directly or indirectly, be interested in or benefited by any such sale, mortgage, exchange, lease, relinquishment, or loan, nor accept nor receive in any manner any fee, commission, compensation, emolument, or benefit arising therefrom, except for the lawful discharge of his official duties.

13. An application for public land is not allowable if executed more than 10 days before its filing at the local United States land office.

14. Any officer violating any of these rules may be deprived of the right of further taking final proofs, and when any commissioner has so offended his action may be called to the attention of the court by which he was appointed, with appropriate recommendations. All registers and receivers and special agents have been charged to use their utmost diligence in seeing that these rules are fully and in good faith complied with, and directed to investigate and fully report any apparent violations thereof which may come to their notice.

CLAY TALLMAN, *Commissioner*.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

**SECTION 2294, UNITED STATES REVISED STATUTES, AS AMENDED
BY THE ACT OF MARCH 4, 1904 (33 STAT., 59).**

That hereafter all proofs, affidavits, and oaths of any kind whatsoever required to be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber and stone acts, may, in addition to those now authorized to take such affidavits, proofs, and oaths, be made before any United States commissioner or commissioner of the court exercising Federal jurisdiction in the Territory or before the judge or clerk of any court of

record in the county, parish, or land district in which the lands are situated: *Provided*, That in case the affidavits, proofs, and oaths hereinbefore mentioned be taken out of the county in which the land is located the applicant must show by affidavit, satisfactory to the Commissioner of the General Land Office, that it was taken before the nearest or most accessible officer qualified to take said affidavits, proofs, and oaths in the land districts in which the lands applied for are located; but such showing by affidavit need not be made in making final proof if the proof be taken in the town or city where the newspaper is published in which the final proof notice is printed. The proof, affidavit, and oath, when so made and duly subscribed, or which may have heretofore been so made and duly subscribed, shall have the same force and effect as if made before the register and receiver, when transmitted to them with the fees and commissions allowed and required by law. That if any witness making such proof, or any applicant making such affidavit or oath, shall knowingly, willfully, or corruptly swear falsely to any material matter contained in said proofs, affidavits, or oaths he shall be deemed guilty of perjury, and shall be liable to the same pains and penalties as if he had sworn falsely before the register. That the fees for entries and for final proofs, when made before any other officer than the register and receiver, shall be as follows:

For each affidavit, twenty-five cents.

For each deposition of claimant or witness, when not prepared by the officer, twenty-five cents.

For each deposition of claimant or witness, prepared by the officer, one dollar.

Any officer demanding or receiving a greater sum for such service shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by a fine not exceeding one hundred dollars.

Part 205
CFR 43

Still in effect
5/28/54 BRB

CIRCULAR No. 435.

also see Circ 618, + 613

**LANDS WITHIN NATIONAL FORESTS—PRACTICE—JOINT
REGULATIONS.**

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 4, 1915.

To registers and receivers and chiefs of field divisions:

The appended regulations will be effective on and after October 1, 1915.

Very respectfully,

CLAY TALLMAN,
Commissioner.

WASHINGTON, D. C., August 5, 1915.

To the Commissioner, Chief of Field Service, chiefs of field divisions, registers and receivers, General Land Office, Department of the Interior; the Forester, district foresters, Forest Service, the Solicitor, and district assistants to the Solicitor, Department of Agriculture.

GENTLEMEN: Better to effectuate cooperation in protecting the interests of the Government and settlers and other claimants to lands within national forests, the following order is made, effective on and after October 1, 1915, superseding order of November 25, 1910 (39 L. D., 374):

1. Hereafter when a person files application to make entry, or to amend an existing entry, embracing lands within a national forest, basing the right of entry, or amendment, on settlement prior to the establishment of the forest, the register and receiver will require such person to file with his application a statement under oath, in duplicate, containing his name and address, description and character of the land involved, the date he established residence on the land, his absence from the land, kind and character of improvements placed thereon, and the amount of land cleared and cultivated, accompanied by the affidavit, in duplicate, of at least one disinterested person, corroborating the statement. The register and receiver will immediately forward the duplicate of such statement and affidavit to the supervisor of the national forest in which the lands are embraced, with information as to the date of filing the application, the date of filing the township plat of survey covering the land, and any other facts of record affecting the application, and will suspend action on the application for 60 days, or upon the request of the forest supervisor, where climatic or other conditions require, for such time, not to exceed six months, as will enable him to make an examination of the claim, unless in the meantime they shall receive notice of no protest, as hereinafter provided.

See Circ. 464, 205 + 442 in CFR 43.

2. The register and receiver in issuing notice of intention to make final proof upon claims, either mineral or nonmineral, within a national forest shall immediately furnish a copy thereof to the supervisor in charge of such forest, and other than to publish such notice and receive final proof will, except in mineral cases as hereinafter prescribed, suspend action on the final proof for 60 days from date thereof, or upon the request of the forest supervisor, where climatic or other conditions require, for such time, not to exceed six months, as will enable him to make an examination of the claim, unless in the meantime they shall receive notice of no protest as hereinafter provided. In each case, however, where the register and receiver, upon examination of the final proof at any time after its submission, find it to be incurably defective, the same will be rejected and the Forest Service so advised, notwithstanding the time within which a protest may be filed hereunder has not expired.

3. The forest supervisor upon receipt of the statement mentioned in paragraph 1, or the notice mentioned in paragraph 2, will at once make investigation of the claim, and will submit to the district forester a report thereon, unless immediate investigation is impossible because of climatic or other conditions, when an extension of time will be requested as provided in paragraphs 1 and 2 hereof, and the investigation will be made and the report submitted as soon as possible within the period of extension. The district forester will promptly consider the report, and if of opinion that no protest should be filed will so advise the register and receiver. If the district forester is of opinion that a protest should be made, he will transmit the papers to the district assistant to the solicitor, who will prepare for his signature a protest, not under oath or corroborated, in which shall be plainly and briefly stated the grounds upon which the protest is based. The protest shall be filed in triplicate with the register and receiver of the proper local land office.

4. Upon receipt of the protest, the register and receiver shall immediately forward a copy thereof to the Commissioner of the General Land Office, in accordance with Rule 4 of the Rules of Practice, and in every case immediately issue the notice required by Rule 5 thereof, accompanied by a copy of the protest, stating that unless the adverse party appears and answers the allegations of said notice within thirty days after service thereof, the allegations of the protest shall be taken as confessed. Upon the filing of the answer, the register and receiver shall set a date for a hearing, after consultation with the district assistant to the solicitor, and notify parties as provided in the Rules of Practice. Upon failure of the claimant to appear at the hearing the allegations of the protest will be taken as confessed. Hearings shall be conducted in accordance with the Rules of Practice. In other than mineral cases, action upon the application and upon the final proof, which may be offered in the usual manner, shall be suspended pending the final determination of the protest, except as provided in paragraph 2 hereof for the disposition of incurably defective proof. In mineral applications for patent the proof shall be considered on its merits, and, if found regular, certificate issued, but the claimant should be advised in such case that patent will be withheld by the General Land Office pending determination of the protest.

5. If no protest be filed within the time limit as provided in paragraphs 1 and 2 hereof, the register and receiver shall take appropriate action upon the application or the final proof. But in no case, in the absence of the filing of a protest or a no protest notice as hereinabove provided, shall patent issue until the Commissioner of the General Land Office is notified by, or ascertains from, the forester that the claim will not be protested, as provided in paragraph 6 hereof.

6. A protest may be initiated against any claim, mineral or non-mineral, embracing lands within national forests at any time prior to patent, by the solicitor or the district assistant to the solicitor of the Department of Agriculture filing in the local land office, in triplicate, a complaint signed by the forester or the district forester, not under oath or corroborated, setting forth clearly and briefly the grounds of the protest. Upon receipt of such complaint the register and receiver shall forward a copy thereof to the Commissioner of the General Land Office; issue the notice required by Rule 5 of the Rules of Practice, accompanied by a copy of the complaint; and arrange for a hearing, if applied for, as provided in paragraph 4 hereof.

7. In all hearings affecting lands or claims within a national forest the district assistant to the solicitor will be entered of record as appearing in behalf of the Government, and will conduct the Government's side of the case.

8. Forest lieu and school selection cases will be handled by the chiefs of field division of the General Land Office in like manner as heretofore. The forest officers will, upon request of the chiefs of field division, render any assistance possible in the making of investigations, and the district assistants to the solicitor of the Department of Agriculture will cooperate with the chiefs of field division in the conduct of hearings in such cases, and thereafter will take action in like manner as heretofore, including the taking of appeals to the Secretary of the Interior.

9. In all Government cases before registers and receivers involving lands or claims within a national forest, the district assistant to the solicitor shall be served with copies of all answers, appeals, motions, orders, and decisions required to be noted under the rules in cases of private contests. The proper law officers of the Department of Agriculture shall also have a right of appeal from any decision by the Commissioner of the General Land Office and to file motion for rehearing in the Department of the Interior, or take other like action in the same manner as a private contestant, and shall receive like notices of proceedings and decisions: *Provided, however,* That the Department of Agriculture shall not be required to take formal appeals from decisions of registers and receivers.

10. Chiefs of field division and special agents will not hereafter take action in regard to any claims within a national forest, except as provided in paragraph 8 hereof, unless specifically directed by the Commissioner of the General Land Office or the Secretary of the Interior: *Provided,* That chiefs of field division may, on request of a district forester, assign mineral examiners to assist in the investigation of cases involving mining claims.

11. Costs of hearings will be paid from the appropriation for expenses of hearings in land entries as now provided for other Gov-

ernment contests. Prior to June 1 of each year the district assistant to the solicitor will mail to the chief of field division in whose division the lands involved lie an estimate of the funds necessary to cover the hearings during the first quarter of the ensuing fiscal year. Like action will be taken on the first day of each month which immediately precedes the other quarters of the fiscal year. Such estimates should be accompanied by a list of the cases to be heard, which should include the names of claimants, local land office, and serial number of entry or application, and character of entries or filings. The chief of field division will transmit the lists and estimates received from the district assistant to the solicitor to the Commissioner of the General Land Office at the same time he submits his estimates for hearings involving lands in his district outside of national forests. When these lists and estimates are received in the General Land Office the appropriation will be allotted for the quarter, and each chief of field division will be advised of the amount which will be allowed for forest cases, and he will advise the district assistant to the solicitor thereof. Payment for the expenses of hearings from the appropriation so allotted will be made by special disbursing agents upon proper vouchers, as is now provided for Government contests in cases outside of national forests, but such vouchers must be approved by the district assistant to the solicitor and by the chief of field division before payment is made.

Respectfully,

FRANKLIN K. LANE,
Secretary of the Interior.
D. F. HOUSTON,
Secretary of Agriculture.

SEP 20 1915

CIRCULAR No. 435.

**LANDS WITHIN NATIONAL FORESTS—PRACTICE—JOINT
REGULATIONS.**

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 4, 1915.

To registers and receivers and chiefs of field divisions:

The appended regulations will be effective on and after October 1, 1915.

Very respectfully,

CLAY TALLMAN,
Commissioner.

WASHINGTON, D. C., *August 5, 1915.*

To the Commissioner, Chief of Field Service, chiefs of field divisions, registers and receivers, General Land Office, Department of the Interior; the Forester, district foresters, Forest Service, the Solicitor, and district assistants to the Solicitor, Department of Agriculture.

GENTLEMEN: Better to effectuate cooperation in protecting the interests of the Government and settlers and other claimants to lands within national forests, the following order is made, effective on and after October 1, 1915, superseding order of November 25, 1910 (39 L. D., 374):

1. Hereafter when a person files application to make entry, or to amend an existing entry, embracing lands within a national forest, basing the right of entry, or amendment, on settlement prior to the establishment of the forest, the register and receiver will require such person to file with his application a statement under oath, in duplicate, containing his name and address, description and character of the land involved, the date he established residence on the land, his absence from the land, kind and character of improvements placed thereon, and the amount of land cleared and cultivated, accompanied by the affidavit, in duplicate, of at least one disinterested person, corroborating the statement. The register and receiver will immediately forward the duplicate of such statement and affidavit to the supervisor of the national forest in which the lands are embraced, with information as to the date of filing the application, the date of filing the township plat of survey covering the land, and any other facts of record affecting the application, and will suspend action on the application for 60 days, or upon the request of the forest supervisor, where climatic or other conditions require, for such time, not to exceed six months, as will enable him to make an examination of the claim, unless in the meantime they shall receive notice of no protest, as hereinafter provided.

2. The register and receiver in issuing notice of intention to make final proof upon claims, either mineral or nonmineral, within a national forest shall immediately furnish a copy thereof to the supervisor in charge of such forest, and other than to publish such notice and receive final proof will, except in mineral cases as hereinafter prescribed, suspend action on the final proof for 60 days from date thereof, or upon the request of the forest supervisor, where climatic or other conditions require, for such time, not to exceed six months, as will enable him to make an examination of the claim, unless in the meantime they shall receive notice of no protest as hereinafter provided. In each case, however, where the register and receiver, upon examination of the final proof at any time after its submission, find it to be incurably defective, the same will be rejected and the Forest Service so advised, notwithstanding the time within which a protest may be filed hereunder has not expired.

3. The forest supervisor upon receipt of the statement mentioned in paragraph 1, or the notice mentioned in paragraph 2, will at once make investigation of the claim, and will submit to the district forester a report thereon, unless immediate investigation is impossible because of climatic or other conditions, when an extension of time will be requested as provided in paragraphs 1 and 2 hereof, and the investigation will be made and the report submitted as soon as possible within the period of extension. The district forester will promptly consider the report, and if of opinion that no protest should be filed will so advise the register and receiver. If the district forester is of opinion that a protest should be made, he will transmit the papers to the district assistant to the solicitor, who will prepare for his signature a protest, not under oath or corroborated, in which shall be plainly and briefly stated the grounds upon which the protest is based. The protest shall be filed in triplicate with the register and receiver of the proper local land office.

4. Upon receipt of the protest, the register and receiver shall immediately forward a copy thereof to the Commissioner of the General Land Office, in accordance with Rule 4 of the Rules of Practice, and in every case immediately issue the notice required by Rule 5 thereof, accompanied by a copy of the protest, stating that unless the adverse party appears and answers the allegations of said notice within thirty days after service thereof, the allegations of the protest shall be taken as confessed. Upon the filing of the answer, the register and receiver shall set a date for a hearing, after consultation with the district assistant to the solicitor, and notify parties as provided in the Rules of Practice. Upon failure of the claimant to appear at the hearing the allegations of the protest will be taken as confessed. Hearings shall be conducted in accordance with the Rules of Practice. In other than mineral cases, action upon the application and upon the final proof, which may be offered in the usual manner, shall be suspended pending the final determination of the protest, except as provided in paragraph 2 hereof for the disposition of incurably defective proof. In mineral applications for patent the proof shall be considered on its merits, and, if found regular, certificate issued, but the claimant should be advised in such case that patent will be withheld by the General Land Office pending determination of the protest.

5. If no protest be filed within the time limit as provided in paragraphs 1 and 2 hereof, the register and receiver shall take appropriate action upon the application or the final proof. But in no case, in the absence of the filing of a protest or a no protest notice as hereinabove provided, shall patent issue until the Commissioner of the General Land Office is notified by, or ascertains from, the forester that the claim will not be protested, as provided in paragraph 6 hereof.

6. A protest may be initiated against any claim, mineral or non-mineral, embracing lands within national forests at any time prior to patent, by the solicitor or the district assistant to the solicitor of the Department of Agriculture filing in the local land office, in triplicate, a complaint signed by the forester or the district forester, not under oath or corroborated, setting forth clearly and briefly the grounds of the protest. Upon receipt of such complaint the register and receiver shall forward a copy thereof to the Commissioner of the General Land Office; issue the notice required by Rule 5 of the Rules of Practice, accompanied by a copy of the complaint; and arrange for a hearing, if applied for, as provided in paragraph 4 hereof.

7. In all hearings affecting lands or claims within a national forest the district assistant to the solicitor will be entered of record as appearing in behalf of the Government, and will conduct the Government's side of the case.

8. Forest lieu and school selection cases will be handled by the chiefs of field division of the General Land Office in like manner as heretofore. The forest officers will, upon request of the chiefs of field division, render any assistance possible in the making of investigations, and the district assistants to the solicitor of the Department of Agriculture will cooperate with the chiefs of field division in the conduct of hearings in such cases, and thereafter will take action in like manner as heretofore, including the taking of appeals to the Secretary of the Interior.

9. In all Government cases before registers and receivers involving lands or claims within a national forest, the district assistant to the solicitor shall be served with copies of all answers, appeals, motions, orders, and decisions required to be noted under the rules in cases of private contests. The proper law officers of the Department of Agriculture shall also have a right of appeal from any decision by the Commissioner of the General Land Office and to file motion for rehearing in the Department of the Interior, or take other like action in the same manner as a private contestant, and shall receive like notices of proceedings and decisions: *Provided, however,* That the Department of Agriculture shall not be required to take formal appeals from decisions of registers and receivers.

10. Chiefs of field division and special agents will not hereafter take action in regard to any claims within a national forest, except as provided in paragraph 8 hereof, unless specifically directed by the Commissioner of the General Land Office or the Secretary of the Interior: *Provided,* That chiefs of field division may, on request of a district forester, assign mineral examiners to assist in the investigation of cases involving mining claims.

11. Costs of hearings will be paid from the appropriation for expenses of hearings in land entries as now provided for other Gov-

ernment contests. Prior to June 1 of each year the district assistant to the solicitor will mail to the chief of field division in whose division the lands involved lie an estimate of the funds necessary to cover the hearings during the first quarter of the ensuing fiscal year. Like action will be taken on the first day of each month which immediately precedes the other quarters of the fiscal year. Such estimates should be accompanied by a list of the cases to be heard, which should include the names of claimants, local land office, and serial number of entry or application, and character of entries or filings. The chief of field division will transmit the lists and estimates received from the district assistant to the solicitor to the Commissioner of the General Land Office at the same time he submits his estimates for hearings involving lands in his district outside of national forests. When these lists and estimates are received in the General Land Office the appropriation will be allotted for the quarter, and each chief of field division will be advised of the amount which will be allowed for forest cases, and he will advise the district assistant to the solicitor thereof. Payment for the expenses of hearings from the appropriation so allotted will be made by special disbursing agents upon proper vouchers, as is now provided for Government contests in cases outside of national forests, but such vouchers must be approved by the district assistant to the solicitor and by the chief of field division before payment is made.

Respectfully,

FRANKLIN K. LANE,
Secretary of the Interior.
D. F. HOUSTON,
Secretary of Agriculture.

In reply please refer to Circular No. 436.

"A" - McD

DEPARTMENT OF THE INTERIOR

General Land Office

Washington

September 4, 1915.

: Service of notice
: on Unknown heirs.

Registers and Receivers,

United States Land Offices.

Sirs:

The Postal Laws and Regulations provide that mail indefinitely addressed shall be denied admission to the registered mail. Accordingly, when notice is to be served by you on the unknown heirs of a public-land claimant, the same should be addressed to the claimant at his address of record and also at the post-office nearest the land. Notice thus addressed will be held to constitute notice to the unknown heirs, provided the letter, if undelivered, is held at the office of delivery for at least thirty days.

All prior regulations in conflict herewith are hereby revoked.

Very respectfully,

CLAY TALLMAN,

Approved:

Commissioner.

BO SWEENEY,

Assistant Secretary.

*Part 220 of
CFR 43*

*Hill in effect
5/28/57 RR*

See Cir 225

In reply please refer to Circular No. 438.

"M" - F.T.L.

DEPARTMENT OF THE INTERIOR

General Land Office

Washington

September 28, 1915.

RETURNS: Report of payments,
sec. 5, act March 4,
1915 (Public 296).

Registers and Receivers,

U. S. Land Offices.

Sirs:

Reference is had to Circular No. 399, regulations governing relief of desert-land entrymen under act of March 4, 1915 (Public 296).

Upon the allowance of an application for relief by this office under the above instructions, the payment of 50 cents per acre must be reported on the "Schedule of Allowances" for the month such money is applied, by serial and receipt numbers, designated as "D L Relief 3-4-15." When reporting such payments no area should be shown on said schedule.

Upon the issuance of final certificate in connection with an entry of this character, the final entry designated as "D L (Final) 3-4-15," showing area and amount of payment of 75 cents per acre only should be shown on the "Schedule of Allowances" for the month final certificate issues. In the "Remarks" column of said schedule notation should be made as follows: "50¢ p. a. earned (giving date)."

When applying the payment of 50 cents per acre the notation "D L Relief 3-4-15" must appear on the "Abstract of Moneys Returned or Applied" (Form 4-103a) opposite report of the item.

In all cases where applications for relief, under the above-mentioned instructions, have been allowed since June 30, 1915, and report of the payments in connection therewith have not been made to this office on Form 4-115d ("Schedule of Allowances"), you will, at once, submit supplemental schedule or schedules, as the case may be, for the month or months payments were earned, reporting same.

Please acknowledge receipt hereof on inclosed card.

Very respectfully,

C. M. BRUCE,
Acting Commissioner.

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In reply please refer to Circular No. 439.

"M" - F.T.L.

DEPARTMENT OF THE INTERIOR

General Land Office

Washington

September 28, 1915.

RETURNS: Report of applications
held by Chief of Field
Division.

Registers and Receivers,

United States Land Offices.

Sirs:

There is inclosed herewith a supply of Form 4-030 for your use in reporting applications held by Chief of Field Division.

A report on said form must be submitted with your monthly returns for each desert-land application and application for sale of isolated tract which has been transmitted to the Chief of Field Division and not returned by said officer in time to be forwarded with the returns for the month during which filed. Each report must be assembled in its numerical order. Care must be observed to show all the information called for by the form.

When a new supply is needed, prompt requisition should be made therefor.

Please acknowledge receipt hereof on inclosed card.

Very respectfully,

C. M. BRUCE,

Acting Commissioner.

CIRCULAR No. 440.

RULE OF PRACTICE 3 AMENDED—NEW RULE ADDED.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 30, 1915.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: On September 23, 1915, Rule of Practice 3 was amended by the department to read as follows:

RULE 3. The statements in the application must be corroborated by the affidavit of at least one witness having such personal knowledge of the facts in relation to the contested entry as, if proven, would render it subject to cancellation, and these facts must be set forth in his affidavit.

On the same date the Rules of Practice were amended by the addition of the following:

RULE 98. Transferees and incumbrancers of land, the title to which is claimed or is in process of acquisition under any public-land law, shall, upon filing notice of the transfer or incumbrance in the district land office, become entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting such land which is required to be given the original entryman or claimant. Every such notice of a transfer or incumbrance must be forthwith noted upon the records of the district land office and be promptly reported to the General Land Office, where like notation thereof will be made. Thereafter such transferee or incumbrancer, as well as the entryman, must be made a party defendant to any proceeding against the entry.

Very respectfully,

D. K. PARROTT,
Acting Assistant Commissioner.

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SECRET No. 110

RULES OF PRACTICE & AMENDMENTS - NEW RULES ADDED

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CIRCULAR No. 444.

RULE OF PRACTICE 83 AMENDED.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 29, 1915.

REGISTERS AND RECEIVERS,
UNITED STATES LAND OFFICES.

SIRS:

By departmental order of October 25, 1915, Rule of Practice 83 was amended to read as follows:

Rule 83. Motions for rehearing before the Secretary must be filed within thirty days after receipt of notice of the decision complained of, and will act as a supersedeas of the decision until otherwise directed by the Secretary. Such motions, briefs, and arguments must not be served on the opposite party and must be filed directly with the Secretary of Interior, Washington, D. C.

Any such motion must state concisely and specifically the grounds upon which the motion for rehearing is based, and be accompanied by brief and argument in support thereof.

If proper grounds are not shown, the rehearing will be denied and sent to the files of the General Land Office, whereupon the commissioner will proceed to execute the decision before rendered. If, upon examination, grounds sufficient for rehearing are shown a rehearing will be granted and the moving party will be notified that he will be allowed fifteen days from receipt of notice within which to serve a copy of his motion, together with all argument in support thereof, on the opposite party, who will be allowed thirty days thereafter in which to file and serve answer, brief, and argument. Thereafter the cause or matter will be again considered and appropriate action taken, which may consist either in adhering to the former decision or modifying or vacating the same, or the making of any further or other order deemed warranted.

As applied to the Territory of Alaska, the periods of time granted by this rule shall be doubled.

OTHER RECENT AMENDMENTS OF THE RULES OF PRACTICE.

Rule 3. [Amended September 23, 1915.]

The statements in the application must be corroborated by the affidavit of at least one witness having such personal knowledge of the facts in relation to the contested entry as, if proven, would render it subject to cancellation, and these facts must be set forth in his affidavit.

Rule 14. [Amended July 2, 1915.]

Upon the failure to serve and file answer as herein provided, the allegations of the contest will be taken as confessed, and the register and receiver will forthwith forward the case, with recommendation thereon, to the General Land Office, and notify the parties by registered mail of the action taken.

Rule 98. [Adopted September 23, 1915.]

Transferees and incumbrancers of land, the title to which is claimed or is in process of acquisition under any public-land law, shall, upon filing notice of the transfer or incumbrance in the district land office, become entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting such land which is required to be given the original entryman or claimant. Every such notice of a transfer or incumbrance must be forthwith noted upon the records of the district land office and be promptly reported to the General Land Office, where like notation thereof will be made. Thereafter such transferee or incumbrancer, as well as the entryman, must be made a party defendant to any proceeding against the entry.

Very respectfully,

CLAY TALLMAN,
Commissioner.

RULES OF PRACTICE

IN CASES BEFORE

THE UNITED STATES DISTRICT LAND OFFICES,
THE GENERAL LAND OFFICE, AND THE
DEPARTMENT OF THE INTERIOR

See Circ. 1749

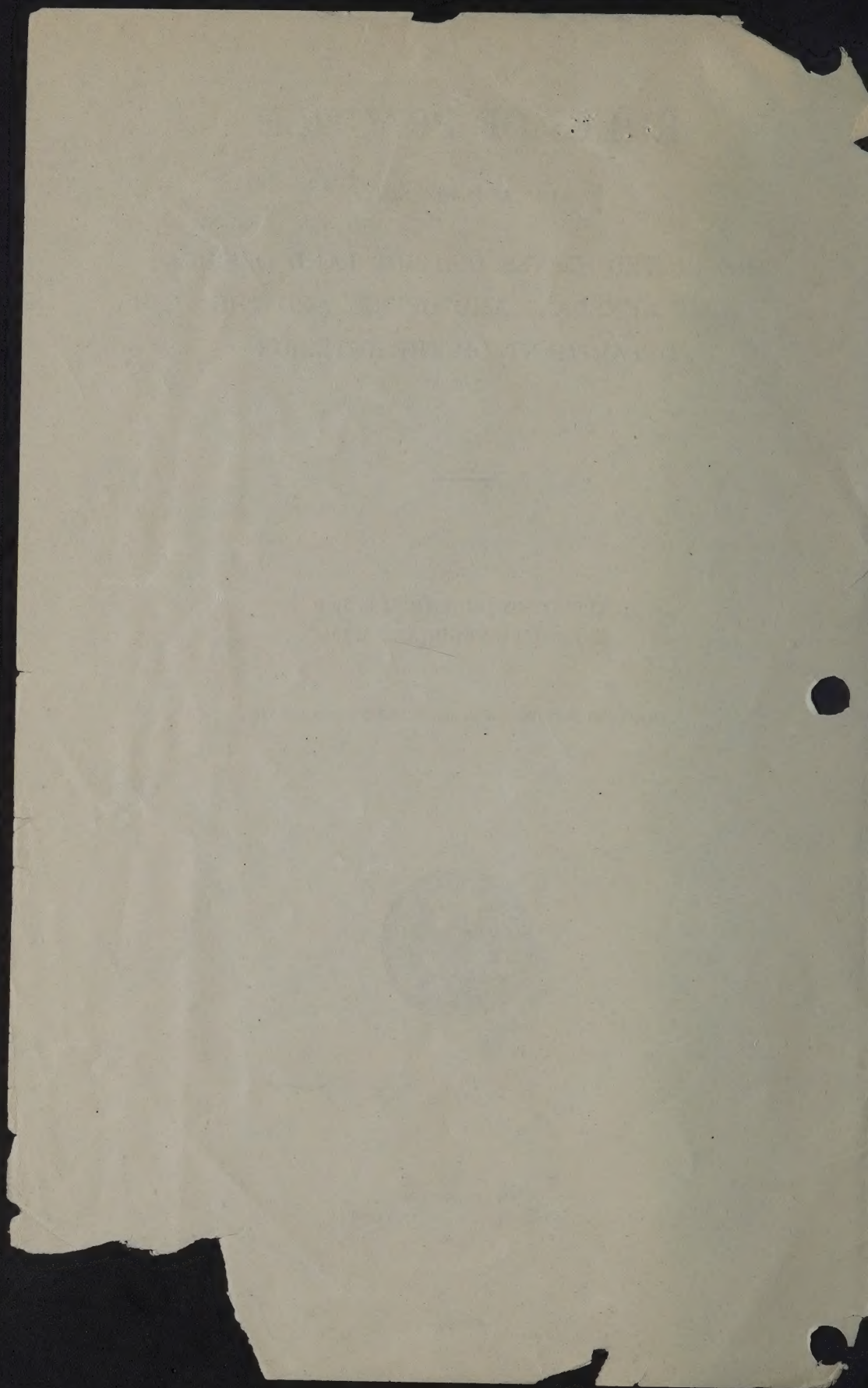
APPROVED DECEMBER 9, 1910
EFFECTIVE FEBRUARY 1, 1911

[REPRINT NOVEMBER 10, 1915, WITH AMENDMENTS]



WASHINGTON
GOVERNMENT PRINTING OFFICE

1915



RULES OF PRACTICE.

I.

PROCEEDINGS BEFORE REGISTERS AND RECEIVERS.

INITIATION OF CONTESTS.

RULE 1. Contests may be initiated by any person seeking to acquire title to, or claiming an interest in, the land involved, against a party to any entry, filing, or other claim under laws of Congress relating to the public lands, because of priority of claim, or for any sufficient cause affecting the legality or validity of the claim, not shown by the records of the Land Department.

Any protest or application to contest filed by any other person shall be forthwith referred to the Chief of Field Division, who will promptly investigate the same and recommend appropriate action.

APPLICATION TO CONTEST.

RULE 2. Any person desiring to institute contest must file, in duplicate, with the register and receiver, application in that behalf, together with statement under oath containing:

- (a) Name and residence of each party adversely interested, including the age of each heir of any deceased entryman.
- (b) Description and character of the land involved.
- (c) Reference, so far as known to the applicant, to any proceedings pending for the acquisition of title to or the use of such lands.
- (d) Statement, in ordinary and concise language, of the facts constituting the grounds of contest.
- (e) Statement of the law under which applicant intends to acquire title and facts showing that he is qualified to do so.
- (f) That the proceeding is not collusive or speculative, but is instituted and will be diligently pursued in good faith.
- (g) Application that affiant be allowed to prove said allegations and that the entry, filing, or other claim be canceled.
- (h) Address to which papers shall be sent for service on such applicant.

RULE 3.¹ The statements in the application must be corroborated by the affidavit of at least one witness having such personal knowledge of the facts in relation to the contested entry as, if proven, would render it subject to cancellation, and these facts must be set forth in his affidavit.

RULE 4. The register and receiver may allow any application to contest without reference thereof to the commissioner; but they must immediately forward copy thereof to the Commissioner of the General Land Office, who will promptly cause proper notations to be made upon the records, and no patent or other evidence of title shall issue until and unless the case is closed in favor of the contestee.

CONTEST NOTICE.

RULE 5. The register and receiver shall act promptly upon all applications to contest, and upon the allowance of any such application shall issue notice, directed to the persons adversely interested, containing:

(a) The names of the parties, description of the land involved, and identification, by appropriate reference, of the proceeding against which the contest is directed.

(b) Notice that unless the adverse party appears and answers the allegation of said contest within 30 days after service of notice the allegations of the contest will be taken as confessed.

(For contents of notice when publication is ordered, see Rule 9.)

SERVICE OF NOTICE.

RULE 6. Notice of contest may be served on the adverse party personally or by publication.

RULE 7. Personal service of notice of contest may be made by any person over the age of 18 years, or by registered mail; when served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing personal delivery to the party to whom the same is directed; when service is made personally, proof thereof shall be by written acknowledgment of the person served, or by affidavit of the person serving the same, showing personal delivery to the party served; except when service is made by publication, copy of the affidavit of contest must be served with such notice.

RULE 8.² Unless notice of contest is personally served within 30 days after issuance of such notice and proof thereof made not later than 30 days after such service, or if service by publication is ordered, unless publication is commenced within 20 days after such order and proof of publication is made not later than 20 days after the fourth

¹ Amended Sept. 23, 1915.

² Amended Nov. 15, 1912.

publication, as specified in Rule 10, the contest shall abate: *Provided*, That if the defendant makes answer without questioning the service or the proof of service of said notice, the contest will proceed without further requirement in those particulars.

SERVING NOTICE BY PUBLICATION.

RULE 9. Notice of contest may be given by publication only when it appears, by affidavit by or on behalf of the contestant, filed within 30 days after the allowance of application to contest and within 10 days after its execution, that the adverse party can not be found, after due diligence and inquiry, made for the purpose of obtaining service of notice of contest within 15 days prior to the presentation of such affidavit, of the postmaster at the place of address of such adverse party appearing on the records of the land office and of the postmaster nearest the land in controversy and also of named persons residing in the vicinity of the land.

Such affidavit must state the last address of the adverse party as ascertained by the person executing the same.

The published notice of contest must give the names of the parties thereto, description of the land involved, identification by appropriate reference of the proceeding against which the contest is directed, the substance of the charges contained in the affidavit of contest, and a statement that upon failure to answer within 20 days after the completion of publication of such notice the allegations of said affidavit of contest will be taken as confessed.

The affidavit of contest need not be published.

There shall be published with the notice a statement of the dates of publication.

RULE 10.¹ Service of notice by publication shall be made by publishing notice at least once a week for four successive weeks in some newspaper published in the county wherein the land in contest lies; and if no newspaper be printed in such county, then in a newspaper printed in the county nearest to such land.

Copy of the notice as published, together with copy of the affidavit of contest, shall be sent by the contestant within 10 days after the first publication of such notice by registered mail directed to the party for service upon whom such publication is being made at the last address of such party as shown by the records of the land office and also at the address named in the affidavit for publication, and also at the post office nearest the land.

Copy of the notice as published shall be posted in the office of the register and also in a conspicuous place upon the land involved,

¹Amended Mar. 7, 1911.

such posting to be made within 10 days after the first publication of notice as hereinabove provided.

RULE 11. Proof of publication of notice shall be by copy of the notice as published attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the same, showing the publication thereof in accordance with these rules.

Proof of posting shall be by affidavit of the person who posted notice on the land, and the certificate of the register as to posting in the local land office.

DEFECTIVE SERVICE OF NOTICE.

RULE 12. No contest proceeding shall abate because of any defect in the manner of service of notice in any case where copy of the notice or affidavit of contest is shown to have been received by the person to be served; but in such case the time to answer may be extended in the discretion of the register and receiver.

ANSWER BY CONTESTEE.

RULE 13. Within thirty days after personal service of notice and affidavit of contest as above provided, or, if service is made by publication, within twenty days after the fourth publication, as prescribed by these rules, the party served must file with the register and receiver answer, under oath, specifically meeting and responding to the allegations of the contest, together with proof of service of a copy thereof upon the contestant by delivery of such copy at the address designated in the application to contest, or personally in the manner provided for the personal service of notice of contest.

Such answer shall contain or be accompanied by the address at which all notices or other papers shall be sent for service upon the party answering.

FAILURE TO ANSWER.

RULE 14.¹ Upon the failure to serve and file answer as herein provided, the allegations of the contest will be taken as confessed, and the register and receiver will forthwith forward the case, with recommendation thereon, to the General Land Office, and notify the parties by registered mail of the action taken.

DATE AND NOTICE OF TRIAL.

RULE 15. Upon the filing of answer and proof of service thereof the register and receiver will forthwith fix time and place for taking testimony, and notify all parties thereof by registered-letter mail not less than 20 days in advance of the date fixed.

¹ Amended July 2, 1915.

PLACE OF SERVICE OF PAPERS.

RULE 16. Proof of delivery of papers required to be served upon the contestant at the place designated under clause "h" of Rule 2 in the application to contest, and upon any adverse party at the place designated in the answer, or at such other place as may be designated in writing by the person to be served, shall be sufficient for all purposes; and where notice of contest has been given by registered mail, and the registry-return receipt shows the same to have been received by the adverse party, proof of delivery at the address at which such notice was so received shall, in the absence of other direction by such adverse party, be sufficient.

Where a party has appeared and is represented by counsel, service of papers upon such counsel shall be sufficient.

CONTINUANCE.

RULE 17. Hearing may be postponed because of absence of a material witness when the party applying for continuance makes affidavit, and it appears to the satisfaction of the officer presiding at such hearing, that—

(a) The matter to which such witness would testify, if present, is material.

(b) That proper diligence has been exercised to procure his attendance, and that his absence is without procurement or consent of the party on whose behalf continuance is sought.

(c) That affiant believes the attendance of said witness can be had at the time to which continuance is sought.

(d) That the continuance is not sought for mere purposes of delay.

RULE 18. One continuance only shall be allowed to either party on account of absence of witnesses, unless the party applying for further continuance shall, at the same time, apply for order to take the testimony of the alleged absent witnesses by deposition.

RULE 19. No continuance shall be granted if the opposite party shall admit that the witness on account of whose absence continuance is desired would, if present, testify as stated in the application for continuance.

Continuances will be granted on behalf of the United States when the public interest requires the same, without affidavit on the part of the Government.

DEPOSITIONS AND INTERROGATORIES.

RULE 20. Testimony may be taken by deposition when it appears by affidavit that—

(a) The witness resides more than 50 miles, by the usual traveled route, from the place of trial.

(b) The witness resides without, or is about to leave, the State or Territory, or is absent therefrom.

(c) From any cause it is apprehended that the witness may be unable to, or will refuse to, attend the hearing, in which case the deposition will be used only in the event personal attendance of the witness can not be obtained.

RULE 21. The party desiring to take deposition must serve upon the adverse party and file with the register and receiver affidavit setting forth the name and address of the witness and one or more of the above-named grounds for taking such deposition, and that the testimony sought is material; which affidavit must be accompanied by proposed interrogatories to be propounded to the witness.

RULE 22. The adverse party will, within 10 days after service of affidavit and interrogatories, as provided in the preceding rule, serve and file cross-interrogatories.

RULE 23. After the expiration of 10 days from the service of affidavit for the taking of deposition and direct interrogatories, commission to take the deposition shall be issued by the register and receiver directed to any officer authorized to administer oaths within the county where such deposition is to be taken, which commission shall be accompanied by a copy of all interrogatories filed.

Ten days' notice of the time and place of taking such deposition shall be given, by the party in whose behalf such deposition is to be taken, to the adverse party.

RULE 24. The officer before whom such deposition is taken shall cause each interrogatory to be written out, and the answer thereto inserted immediately thereafter, and said deposition, when completed, shall be read over to the witness and by him subscribed and sworn to in the usual manner before the witness is discharged, and said officer will thereupon attach his certificate to said deposition, stating that the same was subscribed and sworn to at the time and place therein mentioned.

RULE 25. The deposition, when completed and certified as aforesaid, together with the commission and interrogatories, must be inclosed in a sealed package, indorsed with the title of the proceeding in which the same is taken, and returned by mail or express to the register and receiver, who will indorse thereon the date of reception thereof, and the time of opening said deposition.

RULE 26. If the officer designated to take the deposition has no official seal, certificate of his official character under seal must accompany the return of the deposition.

RULE 27. Deposition may, by stipulation filed with the register and receiver, be taken before any officer authorized to administer oaths, and either by oral examination or upon written interrogatories.

RULE 28. Testimony may, by order of the register and receiver and after such notice as they may direct, be taken by deposition before a United States commissioner, or other officer authorized to administer oaths near the land in controversy, at a time and place to be designated in a notice of such taking of testimony. The officer before whom such testimony is taken will, at the completion of the taking thereof, cause the same to be certified to, sealed, and transmitted to the register and receiver in the like manner as is provided with reference to depositions.

RULE 29. No charge will be made by the register and receiver for examining testimony taken by deposition.

RULE 30. Officers designated to take testimony will be allowed to charge such fees as are chargeable for similar services in the local courts, the same to be taxed in the same manner as costs are taxed by registers and receivers.

RULE 31. When the officer designated to take deposition can not act at the time fixed for taking the same, such deposition may be taken at the same time and place before any other qualified officer designated for that purpose by the officer named in the commission or by agreement of the parties.

RULE 32. No order for the taking of testimony shall be issued until after the expiration of time allowed for the filing of answer.

TRIALS.

RULE 33. The register and receiver and other officers taking testimony may exclude from the trial all witnesses except the one testifying and the parties to the proceeding.

RULE 34. The register and receiver will be careful to reach, if possible, the exact condition and status of the land involved in any contest, and will ascertain all the facts having any bearing upon the rights of parties in interest; to this end said officers should, whenever necessary, personally interrogate and direct the examination of a witness.

RULE 35. In preemption cases the register and receiver will particularly ascertain the nature, extent, and value of alleged improvements; by whom made, and when; the true date of the settlement of persons claiming; the steps taken to mark and secure the claim; and the exact status of the land at that date as shown upon the records of their office.

RULE 36. In like manner, under the homestead and other laws, the conditions affecting the inception of the alleged right, as well as the subsequent acts of the respective claimants, must be fully and specifically examined.

RULE 37. Due opportunity will be allowed opposing claimants to cross-examine witnesses.

RULE 38. Objections to evidence will be duly noted, but not ruled upon, by the register and receiver, and such objections will be considered by the commissioner. Officers before whom testimony is taken will summarily stop examination which is obviously irrelevant.

RULE 39. At the time set for hearing, or at any time to which the trial may be continued, the testimony of all the witnesses present shall be taken and reduced to writing.

When testimony is taken in shorthand the stenographic notes must be transcribed, and the transcription subscribed by the witness and attested by the officer before whom the testimony was taken: *Provided, however,* That when the parties shall, by stipulation, filed with the record, so agree, or when the defendant has failed to appear, or fails to participate in the trial, and the contestant shall in writing so request, such subscription may be dispensed with.

The transcript of testimony shall, in all cases, be accompanied by certificate of the officer or officers before whom the same was taken, showing that each witness was duly sworn before testifying, and, by affidavit of the stenographer who took the testimony, that the transcription thereof is correct.

RULE 40. If a defendant demurs to the sufficiency of the evidence, the register and receiver will forthwith rule thereon. If such demurrer is overruled, and the defendant elects to introduce no evidence, no further opportunity will be afforded him to submit proofs.

When testimony is taken before an officer other than the register and receiver, demurrer to the evidence will be received and noted, but no ruling made thereon, and the taking of evidence on behalf of the defendant will be proceeded with; the register and receiver will rule upon such demurrer when the record is submitted for their consideration.

If said demurrer is sustained, the register and receiver will not be required to examine the defendant's testimony. If, however, the demurrer be overruled, all the evidence will be considered and decision rendered thereon.

Upon the completion of the evidence in a contest proceeding, the register and receiver will render joint report and opinion thereon, making full and specific reference to the posting and annotations upon their records.

RULE 41. The register and receiver will, in writing, notify the parties to any proceeding of the conclusion therein, and that 15 days will be allowed from the receipt of such notice to move for new trial upon the ground of newly discovered evidence, and that if no motion for new trial is made, 30 days will be allowed from the receipt of such notice within which to appeal to the commissioner.

NEW TRIAL.

RULE 42. The decision of the register and receiver will be vacated and new trial granted only upon the ground of newly discovered evidence, in accordance with the practice applicable to new trials in courts of justice: *Provided, however,* That no such application shall be granted except upon showing that the substantial rights of the applicant have been injuriously affected.

No appeal will be allowed from an order granting new trial, but the register and receiver will proceed at the earliest practicable time to retry the case, and will, so far as possible, use the testimony theretofore taken without reexamination of same witnesses, confining the taking of testimony to the newly discovered evidence.

RULE 43. Notice of motion for new trial, setting forth the grounds thereof, and accompanied by copies of all papers not already on file to be used in support of such motion, shall be served upon the adverse party, and, together with proof of service, filed with the register and receiver not more than 15 days after notice of decision; the adverse party shall, within 10 days after such notice, serve and file affidavits or other papers to be used by him in opposition to such motion.

RULE 44. Motions for new trial will not be considered or decided in the first instance by the commissioner or the Secretary of the Interior, or otherwise than on review of the decision thereof by the register and receiver.

RULE 45. If motion for new trial is not made, or if made and not allowed, the register and receiver will, at the expiration of the time for appeal, promptly forward the same, with the testimony and all papers in the case, to the commissioner, with letter of transmittal, describing the case by its title, nature of the contest, and the land involved.

The local officers will not, after forwarding of decision, as above provided, take further action in the case unless so instructed by the commissioner.

FINAL PROOF PENDING CONTEST.

RULE 46. Where trial of a contest brought against any entry or filing has taken place, the entryman may submit final proof and complete the same, with the exception of payment of the purchase money or commissions, as the case may be; such final proof will be retained in the local office, and, should the entry be adjudged valid, will, if satisfactory, be accepted upon payment of the purchase money or commissions, and final certificate will issue without further action on the part of the entryman, except the furnishing by him, or in case of his death by his legal representatives, of nonalienation affidavit.

In such cases the party making the proof will at the time of submitting same be required to pay the fees for reducing the testimony to writing.

APPEALS TO COMMISSIONER.

RULE 47. No appeal from the action or decision of the register and receiver will be considered unless notice thereof is served and filed with the local officers in the manner and within the time specified in these rules.

RULE 48. Notice of appeal from the decision of the register and receiver shall be served and filed with such register and receiver within 30 days after receipt of notice of decision: *Provided, however,* That when motion for new trial is presented and denied, notice of such appeal shall be served within 15 days after receipt of notice of the denial of said motion.

RULE 49. No person who has failed to answer the contest affidavit, or, having answered, has failed to appear at the hearing, shall be allowed an appeal from the final action or decision of the register and receiver.

RULE 50. Such notice of appeal must be in writing, and set forth in clear, concise language the grounds of the appeal; if such appeal be taken upon the ground of insufficiency of the evidence to justify the decision, the particulars of such insufficiency must be specifically set forth in the notice, and, if error of law is urged as a ground for such appeal, the alleged error must be likewise specified.

Upon failure to serve and file notice of appeal as herein provided the case will be closed.

RULE 51. When any party fails to move for a new trial or to appeal from the decision of the register and receiver within the time specified, such decision shall, as to such party, be final and will not be disturbed except in case of—

(a) Fraud or gross irregularity.

(b) Disagreement in the decision between the register and receiver.

No case will be remanded for any defect which does not materially affect the aggrieved party.

RULE 52. All documents received by the local officers must be kept on file and the date of filing noted thereon; no papers will, under any circumstances, be removed from the files or from the custody of the register and receiver, but access to the same, under proper regulations, and so as not to interfere with transaction of public business, will be permitted to the parties or their attorneys.

COSTS AND APPORTIONMENT THEREOF.

RULE 53. A contestant claiming preference right of entry under the second section of the act of May 14, 1880 (21 Stat., 140), must

pay the costs of contest. In other cases each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses; the cost of noting motions, objections, and exceptions must be paid by the party on whose behalf the same are made.

RULE 54. Accumulation of excessive costs will not be permitted. When the officer before whom testimony is being taken shall rule that a course of examination is irrelevant, the same will not proceed except at the sole cost of the party insisting thereon and upon his depositing the amount reasonably sufficient to pay therefor.

RULE 55. Where a party contesting a claim shall by virtue of actual settlement and improvement establish his right of entry of the land in contest under the preemption, homestead, or desert-land laws by virtue of settlement and improvement without reference to the act of May 14, 1880, the costs of contest will be imposed as prescribed in the second clause of Rule 53.

RULE 56. The only cost of contest chargeable by registers and receivers are the legal fees for reducing testimony to writing. No other contest fees or costs will be allowed to or charged by those officers, directly or indirectly.

RULE 57. Registers and receivers may at any time require either party to give security for costs, including expense of taking and transcribing testimony.

RULE 58. Upon the filing of the transcript of the testimony in the local office, any excess in the sum deposited as security for costs of transcribing testimony will be returned to the parties depositing the same.

RULE 59. When hearings are ordered on behalf of the Government, all costs incurred on its behalf will be paid from the proper appropriation, and when, upon the discovery of reason for suspension in the usual course of examination of entries and contest, hearings are ordered between contending parties, the costs will be paid as required by Rule 53.

RULE 60. The costs provided for by the preceding rules will be collected by the receiver when the parties are brought before him in obedience to the order for hearing.

RULE 61. The receiver will append to the report in each case a statement of costs, the amount actually paid by each of the parties, and the disposition thereof.

PREPARATION OF NOTICES.

RULE 62. All notices and other papers not required to be served by the register and receiver must be prepared and served by the respective parties.

RULE 63. The register and receiver will require proper provision to be made for such notices not specifically provided for in these rules as may become necessary in the usual progress of the case to final decision.

APPEAL FROM DECISION REJECTING APPLICATION TO ENTER PUBLIC LANDS.

RULE 64. To facilitate appeals from the action of local officers relative to applications to file, enter, or locate upon the public lands, the register and receiver will—

(a) Indorse upon every rejected application the date of presentation and reasons for rejection.

(b) Promptly advise the party in interest of their action and of his right of appeal.

(c) Note upon their records a memorandum of the transaction.

RULE 65. The party aggrieved will be allowed 30 days from receipt of notice in which to file notice of appeal in the local land office. The notice of appeal, when filed, will be forwarded to the General Land Office with full report upon the case, which should recite all the facts and proceedings had, and must embrace the following particulars:

(a) The original application, with reasons for the rejection thereof.

(b) Description of the tract involved and statement of its status, as shown by the records of the local office.

(c) Reference to all entries, filings, annotations, memorandum, and correspondence shown by the record relating to said tract and to the proceedings had.

II.

PROCEEDINGS BEFORE SURVEYORS GENERAL.

RULE 66. The proceedings in hearings and contests before surveyors general shall, as to notices, depositions, and other matters, be governed as nearly as may be by the rules prescribed for proceedings before registers and receivers, unless otherwise provided by law.

III.

PROCEEDINGS BEFORE THE COMMISSIONER OF THE GENERAL LAND OFFICE
AND SECRETARY OF THE INTERIOR.

EXAMINATION AND ARGUMENT.

RULE 67. The commissioner will cause notice to be given to each party in interest whose address is known of any order or decision affecting the merits of the case or the regular order of proceedings therein.

RULE 68. No additional evidence will be admitted or considered by the commissioner unless offered under stipulation of the parties or in support of a mineral application or protest: *Provided, however*, that the commissioner may order further investigation made or evidence submitted upon particular matters to be by him specifically designated.

Affidavits or other ex parte statements filed in the office of the commissioner will not be considered in finally determining any controversy upon the merits.

RULE 69. After receipt of the record by the commissioner 30 days will be allowed to expire before any action is taken thereon, unless, in the judgment of the commissioner, public policy or private necessity shall require summary action, in which event he will proceed at his discretion, first notifying the attorneys of record of his intention so to do: *Provided*, That where no appeal has been filed the case may be immediately considered and disposed of.

RULE 70. If brief is not filed before a case is reached in its order for examination, the argument will be considered closed, and no further argument or motion of any kind will be entertained, except upon application and upon good cause appearing to the commissioner therefor.

RULE 71. In the discretion of the commissioner, oral argument may be presented, at a time to be fixed by him and upon notice to opposing counsel, which notice shall specify the time for such argument and the specific matter to be discussed. Except as herein provided, oral hearings or suggestions will not be allowed.

REHEARINGS.

RULE 72. No motion for rehearing of any decision rendered by the Commissioner of the General Land Office will be allowed.

MOTIONS.

RULE 73. No motion shall be entertained or considered in any case after the record has been transmitted to a reviewing officer.

In ex parte cases, where the entryman has been allowed by the commissioner to furnish additional evidence or to show cause, or, in the alternative, to appeal, both the evidence or showing and the appeal are filed, the commissioner shall pass upon the evidence or showing submitted, and, if found sufficient, note the appeal as closed. If such evidence or showing be found insufficient, the appeal will be forwarded to the Secretary as in other cases.

APPEAL FROM THE COMMISSIONER TO THE SECRETARY.

RULE 74. Except as herein otherwise provided, an appeal may be taken to the Secretary of the Interior from the final decision of the commissioner in any proceeding relating to the disposal of the public lands and private claims.

RULE 75. No appeal shall be had from the action of the commissioner affirming the decision of the local officers in any case where the party adversely affected shall have failed to appeal from the decision of said local officers.

RULE 76. Notice of appeal from the commissioner's decision must be served upon the adverse party and filed in the office of the register and receiver or in the General Land Office within 30 days from the date of service of notice of such decision.

RULE 77. When the commissioner considers an appeal defective he will notify the party thereof; and if the defect be not cured within 15 days from the date of receipt of such notice, the appeal may be dismissed and the case closed.

RULE 78. In proceedings before the commissioner in which he shall decide that a party has no right to appeal to the Secretary, such party may apply to the Secretary for an order directing the commissioner to certify said proceedings to the Secretary and suspend action until the Secretary shall pass upon the same; such application shall be in writing, under oath, and fully and specifically set forth the grounds upon which the same is made.

RULE 79. When the commissioner shall decide against the right of appeal he will suspend action on the case for 20 days from service of notice of such decision to enable the party against whom the decision is rendered to apply to the Secretary for an order certifying the record as hereinabove provided.

RULE 80. The appellant will be allowed 20 days after service of notice of appeal within which to serve and file brief and specification of error, as provided by Rule 50, the adverse party 20 days after service of such within which to serve and file reply thereto; appellant will be allowed 10 days after service of such reply within which to serve and file response: *Provided, however,* That if either party is not represented by counsel having offices in the city of Washington, 10 days in addition to each period above specified will be allowed within which to serve and file the respective briefs.

No arguments otherwise than above provided shall be made or filed without permission of the Secretary or commissioner granted upon notice to the adverse party.

RULE 81. Examination of cases will be facilitated by filing arguments in printed form.

ORAL ARGUMENT BEFORE THE SECRETARY.

RULE 82.¹ Oral argument in any case pending before the Secretary of the Interior will be allowed, on motion, in the discretion of the Secretary, at a time to be fixed by him, after notice to the parties. The counsel for each party will be allowed only one-half an hour, unless an extension of time is ordered before the argument begins.

REHEARING OF SECRETARY'S DECISION.

RULE 83.² Motions for rehearing before the Secretary must be filed within 30 days after receipt of notice of the decision complained of and will act as a supersedeas of the decision until otherwise directed by the Secretary. Such motions, briefs, and arguments must not be served on the opposite party and must be filed directly with the Secretary of Interior, Washington, D. C.

Any such motion must state concisely and specifically the grounds upon which the motion for rehearing is based and be accompanied by brief and argument in support thereof.

If proper grounds are not shown the rehearing will be denied and sent to the files of the General Land Office, whereupon the commissioner will proceed to execute the decision before rendered. If upon examination grounds sufficient for rehearing are shown, a rehearing will be granted and the moving party will be notified that he will be allowed 15 days from receipt of notice within which to serve a copy of his motion, together with all argument in support thereof, on the opposite party, who will be allowed 30 days thereafter in which to file and serve answer, brief, and argument. Thereafter the cause or matter will be again considered and appropriate action taken, which may consist either in adhering to the former decision or modifying or vacating the same, or the making of any further or other order deemed warranted.

As applied to the Territory of Alaska, the periods of time granted by this rule shall be doubled.

MOTIONS FOR REVIEW AND REREVIEW.

RULE 84. Motions for review and rereview are hereby abolished.

SUPERVISORY POWER OF SECRETARY.

RULE 85. Motion for the exercise of supervisory power will be considered only when accompanied by positive showing of extraordinary emergency or exigency demanding the exercise of such authority.

In proceedings before the Secretary of the Interior the same rules shall govern, in so far as applicable, as are provided for proceedings before the Commissioner of the General Land Office.

¹ Amended Nov. 6, 1911.

² Amended Oct. 25, 1915.

RULE 86. No rule here prescribed shall be construed to deprive the Secretary of the Interior of any direct or supervisory power conferred upon him by law.

ATTORNEYS.

RULE 87.¹ Every attorney, before practicing before the Department of the Interior and its bureaus, must comply with the requirements of the regulations prescribed by the Secretary of the Interior pursuant to section 5 of the act of July 4, 1884 (23 Stat., 101).

RULE 88. In all cases where any party is represented by attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any notice or other paper relating to such proceedings upon such attorney will be deemed notice to the party in interest.

Where a party is represented by more than one attorney service of notice or other papers upon one of said attorneys shall be sufficient.

RULE 89. No person hereafter appearing as a party or attorney in any case shall be entitled to notice of any proceeding therein who does not, at the time of appearance, file in the office in which the case is pending a statement showing his name and post-office address and the name and post-office address of the party whom he represents.

RULE 90. Any attorney in good standing employed, and whose appearance is regularly entered in any case pending before the department, will be allowed full opportunity to consult the records therein, together with abstracts, field notes, tract books, and correspondence which is not deemed privileged and confidential.

RULE 91. Verbal or other inquiries by parties or counsel directed to any employee of the department, except the commissioner, assistant commissioner, or chief of division of the General Land Office, or the Secretary and Assistant Secretary, the Solicitor, or the first assistant attorney in the offices of the Secretary of the Interior, or with the consent of one or more of said officers, is expressly forbidden.

RULE 92. Abuse of the privilege of examining records of the department or violation of the foregoing rule by any attorney will be treated as sufficient cause for institution of disbarment proceedings.

SERVICE OF NOTICES.

RULE 94. Fifteen days, exclusive of the day of mailing, will be allowed for the transmission of notice or other papers by mail from the General Land Office, except in case of notice to resident attorneys, in which case one day will be allowed.

In computing time for service of papers under these rules of practice the first day shall be excluded and the last day included: *Pro-*

¹ Amended Apr. 9, 1915.

vided, however, That where the last day falls on Sunday or a legal holiday, such time shall include the next following business day.

RULE 95. Notice of all motions and proceedings before the commissioner or Secretary shall be served upon parties or counsel personally or by registered mail, and no motion will be entertained except on proof of service of notice thereof.

RULE 96. Ex parte proceedings and proceedings in which the adverse party does not appear will, as to notice of decision, time for appeal, and filing of exceptions and arguments, be governed by the rules prescribed in other cases, so far as the same are applicable. In such cases the commissioner or Secretary may, pursuant to application and upon good cause being shown therefor, permit additional evidence to be presented for the purpose of curing defects in the proofs of record.

INTERVENTION.

RULE 97. No person shall be allowed to intervene in any case except upon application therefor, under oath, showing his interest therein.

HOW TRANSFEREES AND INCUMBRANCERS MAY ENTITLE THEMSELVES TO NOTICE OF CONTEST OR OTHER PROCEEDINGS.

RULE 98.¹ Transferees and incumbrancers of land the title to which is claimed or is in process of acquisition under any public-land law shall, upon filing notice of the transfer or incumbrance in the district land office, become entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting such land which is required to be given the original entryman or claimant. Every such notice of a transfer or incumbrance must be forthwith noted upon the records of the district land office and be promptly reported to the General Land Office, where like notation thereof will be made. Thereafter such transferee or incumbrancer, as well as the entryman, must be made a party defendant to any proceeding against the entry.

ACKNOWLEDGMENT OF THE FILING OF APPLICATIONS AND OTHER PAPERS.

RULE 99.² The Secretary and the Commissioner of the General Land Office will not acknowledge the receipt of papers forwarded by mail, but if a prepared receipt is forwarded to a district land office with any paper the register or receiver will sign and return the receipt to the party who forwarded the same, after inserting the date and the serial number.

¹ Adopted Sept. 23, 1915.

² Adopted Nov. 10, 1915.

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In reply please refer to Circular No. 447.

"F" - F. R. D.

DEPARTMENT OF THE INTERIOR

General Land Office

Washington, D. C.

November 23, 1915.

Homestead applications affected by
transmission-line withdrawals.

Registers and Receivers,
United States Land Offices.

Sirs:

By decision of February 6, 1915, the Department in the case of George F. Wunsch, Helena 09158, held in regard to a homestead application filed for certain lands through which a strip 180 feet wide was withdrawn as a power site reserve, under the act of June 25, 1910 (36 Stat., 847), that the entry of Wunsch could be allowed but that on the entry papers and in the patent the following exception was to be placed:

"Excepting and excluding from these presents all that tract of land described and included in power site reserve No. 349, created by executive order April 22, 1913, under the act of Congress approved June 25, 1910 (36 Stat., 847)."

In view of this decision, you will in the future accept all applications to enter lands, part of which have been withdrawn for transmission lines, being careful to explain to the applicants that when patent issues, the lands included in the transmission-line withdrawal will be excluded from the patent.

Upon accepting such applications, you will transmit them at once, by special letter and without approval, to this office, that the area for which deduction of fees, commissions, or purchase price (if any) is to be made, may be computed.

You will accept proper fees, commissions, or purchase money for the entire area of the subdivision sought to be entered, and deposit the same as unearned moneys pending notification by this office of the actual area of the entry or filing.

Upon return of the application to you, specific instructions will be given as to the actual area of the entry subject to fees, commissions, or purchase money.

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Circular No. 447 -- 2.

You will then in conformity with the terms of the letter returning the application, approve it, noting across the face the legend-

"Excepting and excluding all that tract of land described and included in power site reserve No. created by executive order dated under the act of Congress approved June 25, 1910 (36 Stat., 847), more specifically described as follows * * * ."

You will then apply an amount of money sufficient to cover the fee, commissions, or purchase price (if any) for the amount of land found by this office to be subject to entry and patent, returning by the receiver's official check the surplus (if any) to the applicant, thus closing the account.

Paragraphs 7 and 81 (as amended) of Circular No. 105, May 4, 1912, should be followed insofar as they apply.

Paragraph 81 of Circular No. 105 is hereby amended to read as follows:

"(n) Moneys tendered with any application to make entry or proof where a withdrawal as a transmission line is made under the act of June 25, 1910 (36 Stat., 847), and the land withdrawn is to be excluded from the patent pending computation in the General Land Office of the area for which deduction of fee, commissions, or purchase price (if any) is to be made."

Very respectfully,

CLAY TALLMAN,

Commissioner.

Approved:

ANDRIEUS A. JONES,

First Assistant Secretary.

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100-100000-100000

100-100000-100000

Very respectfully,

WILLIAM T. HALL

Commissioner

100-100000-100000

WILLIAM T. HALL

100-100000-100000

Circular No. 449.

DEPARTMENT OF THE INTERIOR

General Land Office

Washington

December 11, 1915.

Registration of notices.

Registers and Receivers,
United States Land Offices.

Sirs:

It appears that recently in numerous instances letters from local offices have been unnecessarily registered. Your attention is directed to the provisions of Circular No. 20 which directed that no registration fee will be paid by the United States unless the letter contains one of the following:

1. Notice of hearing.
2. Notice of decision, whether of your or this office, or of the Department, TO THE PARTY ADVERSELY AFFECTED only, where the decision is AN ADJUDICATION OF THE CASE AND THE PARTY HAS THE RIGHT OF APPEAL THEREFROM.
3. Notice of preference right or of other right to be exercised within a certain time, and of requirements of this office and the Department.

Said Circular No. 20 also provided:

"Notice of the closing of cases, interlocutory decisions upon motions, orders of suspension and all requirements made by your office of claimants, that do not constitute a final disposition of the case, coupled with the right of appeal, MUST NOT BE REGISTERED; and all instructions or circulars heretofore issued to the contrary are hereby revoked.

"It is believed that in many cases personal service may be made upon claimants or their counsel; and it is expected that, in every instance where possible, you will adopt this preferable method of service."

Very respectfully,

CLAY TALLMAN,

Commissioner.

SECRET
MEMORANDUM FOR THE SECRETARY

SUBJECT: [Illegible]

DATE: [Illegible]

TO: [Illegible]

FROM: [Illegible]

The following information was obtained from a review of the records of the [Illegible] Department, and is being furnished to you for your information. It is requested that you advise this Bureau of any further information that may be obtained from your office.

[The remainder of the text in this block is illegible due to extreme fading.]

Very respectfully,
[Illegible Signature]
[Illegible Title]

*Supplement
of Circular 851*

CIRCULAR No. 450.

AMENDMENT OF TIMBER AND STONE REGULATIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 20, 1915.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: The second paragraph of section 20 of Regulations under the timber and stone law, approved November 30, 1908, embraced in Circular No. 289 (43 L. D., 37), is hereby modified to read:

"If the register and receiver reject the application as to part or all of the land, upon the ground that the appraisement shows it not to be subject to timber and stone entry, applicant may within thirty days submit a showing by affidavit, corroborated by at least two witnesses having actual knowledge of the character of the land, setting forth facts which tend to disprove the appraisement and that it is chiefly valuable for the timber and stone thereon, and if a prima facie showing is made, thereupon a hearing shall be ordered to determine the facts, after a date has been fixed for the same by agreement between the chief of field division and the register and receiver."

Respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

20497°-16

AGREEMENT OF LIMBER AND STONE DELIVERY

THIS AGREEMENT OF LIMBER AND STONE DELIVERY

WITNESSETH THAT THE PARTIES HERETO

IN WITNESS WHEREOF

CIRCULAR No. 456.

COST OF CERTIFIED COPIES OF RECORDS AND PAPERS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C., January 28, 1916.

1. The schedule of fees for the preparation and delivery of certified copies of records and papers set forth in Circular No. 180 (41 L. D., 333) is amended to read as follows:

- (a) For written copies, 15 cents for each 100 words.
- (b) For photographic copies, 15 cents for each sheet not exceeding 11½ by 15 inches; for larger sizes, a proportionate cost, not to exceed 40 cents per sheet.
- (c) For photolithographic copies, 25 cents each.
- (d) For tracings or blue prints, a sum equal to the cost of preparing the same.
- (e) For certifying a copy and affixing thereto the seal of the officer certifying, 25 cents.
- (f) For each certified copy of any printed order or regulation intended for gratuitous distribution, 25 cents.

2. To the foregoing fees, when certified copies are ordered, must be added 10 cents for an internal-revenue stamp which must be affixed to each certificate, under the provisions of the act of October 22, 1914 (38 Stat., 754), as extended on December 17, 1915, by Public Resolution No. 2.

3. The cost of a certified photographic copy of a patent is ordinarily 50 cents, and of a typewritten copy 95 cents, which includes the cost of the 10-cent internal-revenue stamp.

4. A separate certificate and seal must be attached to each certified copy of a patent, as well as to each certified copy of a township plat; but where there have been two or more surveys of a township, and a copy of each plat of survey is desired, all of such related plats may be certified under one certificate and seal.

5. Those who prefer may, instead of forwarding a 10-cent internal-revenue stamp for each certificate, send the cost of the stamps.

6. All fees for certified copies must be paid in advance. In any case where the amount remitted is insufficient, the remitter will be promptly advised concerning the deficiency.

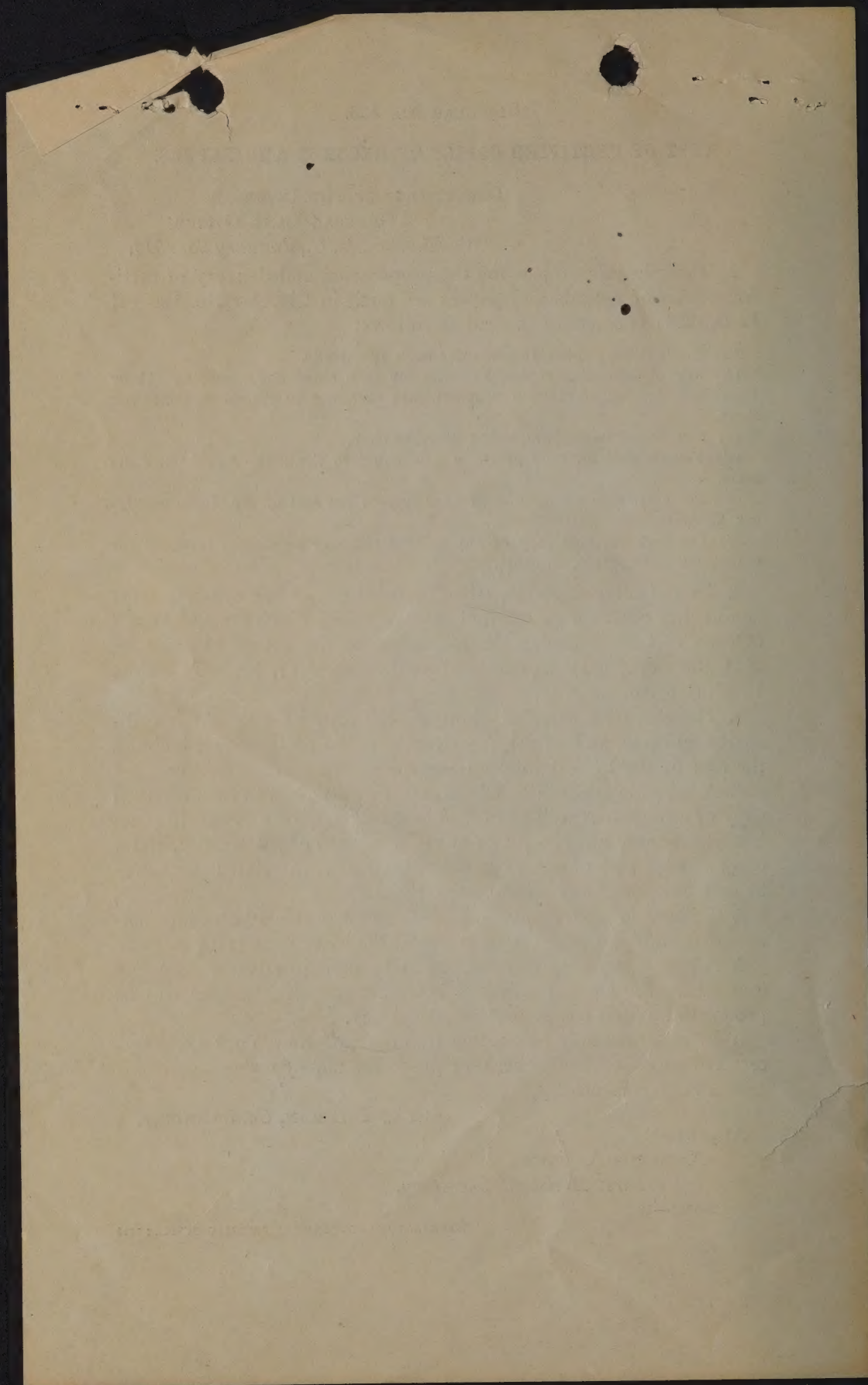
7. Remittances may be effected by means of New York exchange, certified check, cashier's check, or post-office money order.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.



Part 222 7 CFR 43

*Revised in effort
5/28/54 RB*

*Amended by Circular 1299-
see Part 222 7 CFR 43*

CIRCULAR No. 460.

MANNER OF PROCEEDING IN CONTESTS INITIATED UPON A REPORT BY A REPRESENTATIVE OF THE GENERAL LAND OFFICE.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 26, 1916.

TO SPECIAL AGENTS AND REGISTERS AND RECEIVERS,
UNITED STATES LAND OFFICES:

The following rules are prescribed for proceedings in contests initiated upon a report by a representative of the General Land Office. All existing instructions in conflict herewith are superseded:

1. The purpose hereof is to secure speedy action upon claims to the public lands, and to allow claimant, entryman, or other claimant of record, opportunity to file a denial of the charges against the entry or claim, and to be heard thereon if he so desires.

2. Upon receipt of a report this office will consider the same and determine therefrom whether the facts stated, if true, would warrant the rejection or cancellation of the entry or claim.

3. Should the charges, if not disputed, justify the rejection or cancellation of the entry or claim the local officers will be duly notified thereof and directed to issue notice of such charges in the manner and form hereinafter provided for, which notice must be served upon the entryman and other parties in interest shown to be entitled to notice.

4. The notice must be written or printed and must refer to the letter from this office by initial and date, as authority for issuing the notice, and must state fully the charges as contained in said letter; also the number of the entry or claim, subdivision of land involved, name of entryman or claimant or other known parties in interest.

5. The notice must also state that the charges will be accepted as true (a) unless the entryman or claimant files in the local office within 30 days from receipt of notice a written denial under oath, of said charges, with an application for a hearing, (b) or submits a statement of facts rendering the charges immaterial, (c) or if he fails to appear at any hearing that may be ordered in the case.

6. Notice of the charges may in all cases be served personally upon the proper party by any officer or person or by registered letter mailed to the last address of the party to be notified, as shown by the record, and to the post office nearest to the land. When it is necessary to serve notice on the unknown heirs of a person in interest, the same must be addressed to that person at his address of record and also at the post office nearest the land. Proof of personal service shall be the written acknowledgment of the person served or the affidavit of the person who served the notice, attached thereto, stating the time, place, and manner of service. Proof of service of notice by registered letter shall consist of the report of the register

and receiver who mailed the notices, accompanied by the post-office registry return receipts, or the returned unclaimed registered letters.

7. If a hearing is asked for, the local officers will consider same and confer with the Chief of Field Division relative thereto and fix a date for the hearing, due notice of which must be given entryman or claimant. The above notice may be served by registered mail. By ordinary mail, a like notice will be sent to the Chief of Field Division.

8. The Chief of Field Division will duly submit, upon the form provided therefor, to this office, an estimate of the probable expense required on behalf of the Government. He will also cause to be served subpoenas upon the Government witnesses and take such other steps as are necessary to prepare the case for prosecution.

9. The Government must appear with its witnesses on the date and at the place fixed for said hearing, unless there is reason to believe that no appearance on behalf of the Government will be required. The officer in charge of hearings must, therefore, keep advised, as far as possible, as to whether the defendant intends to appear at the hearing. The Chief of Field Division may, when present, conduct the hearing on behalf of the Government.

10. If the entryman or claimant fails to deny the charges under oath and apply for a hearing, or to submit a statement of facts rendering the charges immaterial, or fails to appear at the hearing ordered without showing good cause therefor, such failure will be taken as an admission of the truth of the charges and will obviate the necessity for the Government submitting evidence in support thereof, and the register and receiver will forthwith forward the case with recommendation thereon to the General Land Office and notify the parties by registered mail of the action taken. In cases finally closed upon default of claimant, if application to reopen any case is filed with the register and receiver, they will forthwith forward same with recommendations to the General Land Office.

11. Upon the day set for the hearing and the day to which it may be continued the testimony of the witnesses for either party may be submitted, and both parties, if present, may examine and cross-examine the witnesses, under the rules, the Government to assume the burden of proving the charges, unless otherwise ordered.

12. If a hearing is had, as provided in paragraph 11, the local officers will render their decision upon the record, giving due notice thereof in the usual manner. When decision is adverse to the Government, notice thereof must be sent to the Chief of Field Division.

13. Appeals or briefs, if filed, must be in accordance with the rules but need not be served upon the Chief of Field Division or Government representative in charge of the hearing.

14. The above proceedings will be governed by the rules of practice. All notices served on claimants or entrymen must likewise be served upon transferees or mortgagees.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

MANNER OF PROCEEDING IN CONTESTS INITIATED UPON A REPORT
BY A REPRESENTATIVE OF THE GENERAL LAND OFFICE

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

WASHINGTON, D. C., February 26, 1916.

To Special Agents, and Registers and Receivers,
United States Land Offices:

The following rules are prescribed for proceedings in contests initiated upon a report by a representative of the General Land Office. All existing instructions in conflict herewith are superseded:

1. The purpose hereof is to secure speedy action upon claims to the public lands, and to allow claimant, entryman, or other claimant of record, opportunity to file a denial of the charges against the entry or claim, and to be heard thereon if he so desires.

2. Upon receipt of a report this office will consider the same and determine therefrom whether the facts stated, if true, would warrant the rejection or cancellation of the entry or claim.

3. Should the charges, if not disputed, justify the rejection or cancellation of the entry or claim the local officers will be duly notified thereof and directed to issue notice of such charges in the manner and form hereinafter provided for, which notice must be served upon the entrymen and other parties in interest shown to be entitled to notice.

4. The notice must be written or printed and must refer to the letter from this office by initial and date, as authority for issuing the notice, and must state fully the charges as contained in said letter; also the number of the entry or claim, subdivision of land involved, name of entryman or claimant or other known parties in interest.

5. The notice must also state that the charges will be accepted as true, (a) unless the entryman or claimant files in the local office within thirty days from receipt of notice a written denial, under oath, of said charges, with an application for a hearing, (b) or submits a statement of facts rendering the charges immaterial, (c) or if he fails to appear at any hearing that may be ordered in the case.

6. Notice of the charges may in all cases be served personally upon the proper party by any officer or person or by registered letter mailed to the last address of the party to be notified, as shown by the record, and to the post office nearest to the land. When it is necessary to serve notice on the unknown heirs of a person in interest, the same must be addressed to that person at his address of record and also at the post office nearest the land. Proof of personal service shall be the written acknowledgment of the person served or affidavit of the person who served the notice, attached thereto, stating the time, place, and manner of service. Proof of service of notice by registered letter shall consist of the report of the register and receiver who mailed the notices, accompanied by the post office registry return receipts, or the returned unclaimed registered letters.

7. If a hearing is asked for, the local officers will consider same and confer with the Chief of Field Division relative thereto and fix a date for the hearing, due notice of which must be given entryman or claimant. The above notice may

be served by registered mail. By ordinary mail, a like notice will be sent to the Chief of Field Division.

8. The Chief of Field Division will duly submit, upon the form provided therefor, to this office, an estimate of the probable expense required on behalf of the Government. He will also cause to be served subpoenas upon the Government witnesses and take such other steps as are necessary to prepare the case for prosecution.

9. The Government must appear with its witnesses on the date and at the place fixed for said hearing, unless there is reason to believe that no appearance on behalf of the Government will be required. The officer in charge of hearings must, therefore, keep advised, as far as possible, as to whether the defendant intends to appear at the hearing. The Chief of Field Division may, when present, conduct the hearing on behalf of the Government.

10. If the entryman or claimant fails to deny the charges under oath and apply for a hearing, or to submit a statement of facts rendering the charges immaterial, or fails to appear at the hearing ordered without showing good cause therefor, such failure will be taken as an admission of the truth of the charges and will obviate the necessity for the Government submitting evidence in support thereof, and the register and receiver will forthwith forward the case with recommendation thereon to the General Land Office and notify the parties by registered mail of the action taken. In cases finally closed upon default of claimant if application to reopen any case is filed with the register and receiver they will forthwith forward same with recommendations to the General Land Office.

11. Upon the day set for the hearing and the day to which it may be continued the testimony of the witnesses for either party may be submitted, and both parties, if present, may examine and cross-examine the witnesses, under the rules, the Government to assume the burden of proving the charges, unless otherwise ordered.

12. If a hearing is had, as provided in paragraph 11, the local officers will render their decision upon the record, giving due notice thereof, in the usual manner. When decision is adverse to the Government, notice thereof must be sent to the Chief of Field Division.

13. Appeals or briefs, if filed, must be in accordance with the rules, but need not be served upon the Chief of Field Division or Government representative in charge of the hearing.

14. The above proceedings will be governed by the rules of practice. All notices served on claimants or entrymen must likewise be served upon transferees or mortgagees.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

4-018 a
UNITED STATES
DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
DISTRICT LAND OFFICE

(Place)

(Date)

United States

Involving

vs.

By authority of General Land Office
letter dated

In the matter of the above-entitled case, you are hereby notified that the following charges have been filed by a representative of the Interior Department, against the validity of your entry, to wit:

You are notified that if you fail to file in this office within thirty days of date of service of this notice, a written or printed answer, under oath, denying each of said charges, or showing a state of facts rendering said charges immaterial, and applying for a hearing to determine the truth of said charges and answer, or if you fail to appear at a hearing applied for, your said above entry or claim will be considered for rejection or cancellation.

As the entry record is defective, in the event said charges should fail, it will be necessary to submit curative showing as to

MAR 27 1916

*Supervised
by sec. 851*

CIRCULAR No. 461.

PARAGRAPH 19 OF REGULATIONS UNDER TIMBER AND STONE
LAW AMENDED.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 28, 1916.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: On February 19, 1916, the department amended paragraph 19 of the regulations under the timber and stone law (Circular No. 289—43 L. D., 37) to provide for notice to the applicant of his rights under said section where appraisal of the property is not made within nine months from date of the application to purchase.

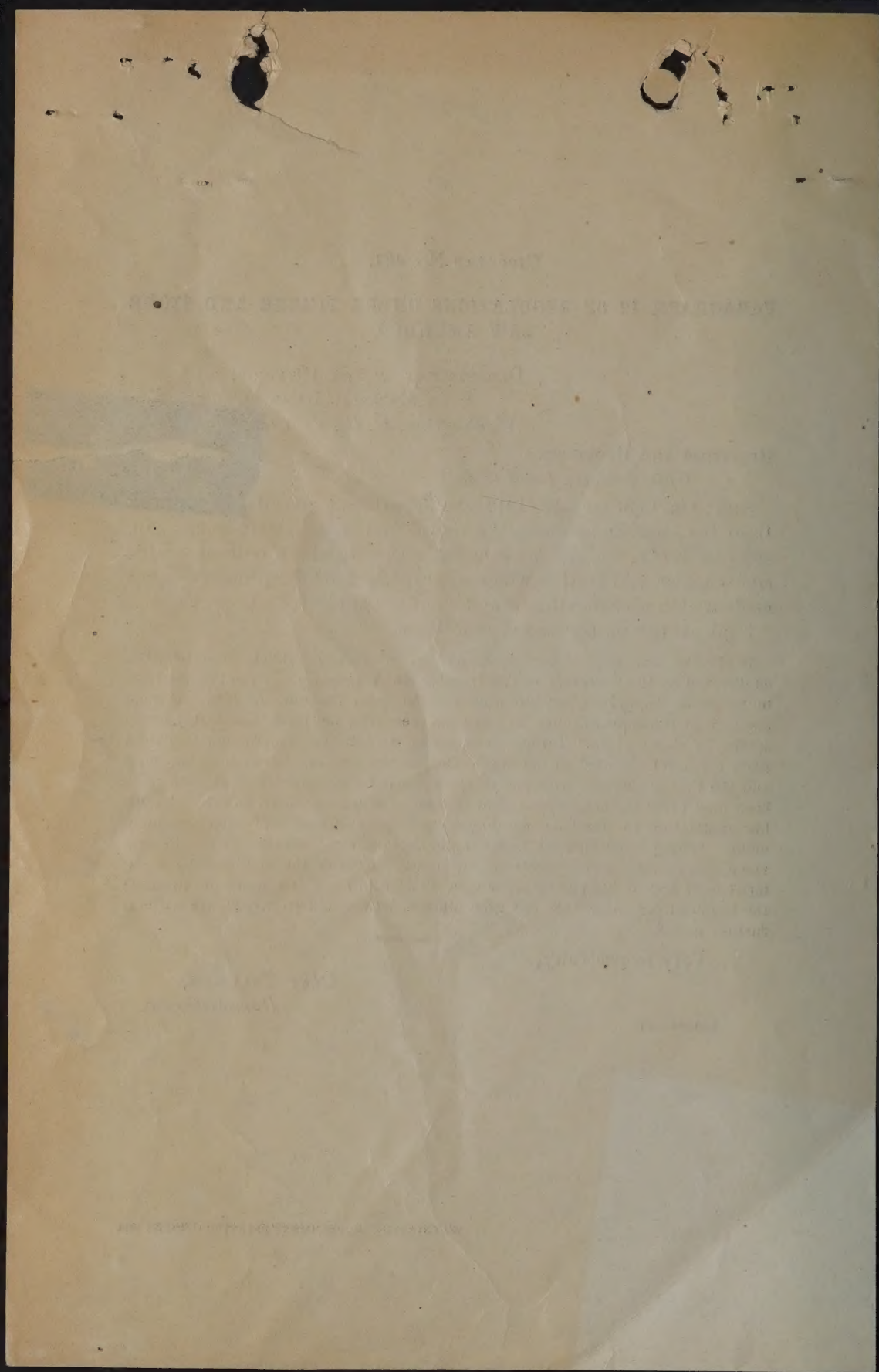
Said paragraph now reads as follows:

19. Unless the land department, as hereinbefore provided, or otherwise, as directed by the Secretary of the Interior, shall appraise any land applied for under these regulations within nine months from the date of filing of such application, the applicant may, at any time thereafter not later than 30 days from service of notice of such failure to appraise, deposit the amount, not less than \$2.50 per acre, specified in his application as the reasonable value of the land and the timber thereon, with the receiver, provided no appraisal shall have been filed prior to such deposit, and thereupon will be allowed to proceed with his application to purchase as though the appraisal had been regularly made. Where appraisal is not made within nine months, as herein provided, the register and receiver will promptly so notify the applicant by registered mail and of his rights hereunder. The failure of the applicant to make the required deposit within the time allowed will terminate his rights without further notice.

Very respectfully,

CLAY TALLMAN,
Commissioner.

31609°—16



CIRCULAR No. 471.

SUPPLEMENTAL INSTRUCTIONS UNDER SECTION 5 OF ACT OF
MARCH 4, 1915 (38 STAT., 1161).

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 9, 1916.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: The following instructions are for your guidance in disposing of cases under section 5 of the act of March 4, 1915 (38 Stat., 1161), and are to be considered as supplementing, not superseding, the regulations embodied in Circular No. 399 of April 13, 1915 (44 L. D., 56).

Applications for relief should ordinarily be transmitted with your returns for the month during which filed. If the entry is involved in contest proceedings the application for relief should be transmitted by special letter. All elections to purchase should be transmitted with your returns for the month during which filed.

If the entryman files his election to purchase under paragraph 3 of the act within the 60 days allowed by regulations contained in Circular No. 399, he must tender therewith a payment sufficient in amount to cover the purchase price of the land involved in the entry at the rate of 50 cents per acre.

If the entryman has previously made the final payment of \$1 an acre in connection with a former final proof under the desert-land laws in which case the relief is sought, and the same has been deposited and accounted for as earned, he may elect to have 50 cents per acre of said former payment applied in connection with his election to purchase under paragraph 3 of the act and the remainder of 50 cents per acre credited on the payment of 75 cents per acre required at the time the final proof is filed, and pay the additional sum of 25 cents per acre in cash.

Initial payments should be reported on the "Schedule of allowances" for the months the moneys are applied, in accordance with Circular No. 438, of September 28, 1915. In cases where final proof has been offered and credit of 50 cents per acre of the amount previously covered into the Treasury is requested, the payments should be reported on the above-mentioned schedule under dates of the filing of the elections, and reference should be made on said schedule to the numbers of the receipts which issued for such payments, and in the "Remarks" column to the dates the moneys were applied. Receipt numbers and amounts involved, together with a reference to letters from this office granting relief, should be noted on elections to purchase.

Where the payment of 50 cents per acre is made at the time the election to purchase is filed, relief having been granted by this office, such payment must be applied by the receiver on the date of the filing of the election. Should an election to purchase be filed in a

case where relief has not been granted and the initial payment tendered, the moneys must be held by the receiver as "unearned moneys" until action is had by this office on the application for relief, and the moneys should then be applied or returned to the applicant in accordance with the action had by this office. Should credit for moneys previously covered into the Treasury be requested before relief is granted, and relief should subsequently be granted, such payment should be reported on the "Schedule of allowances" under date of the letter from this office granting relief. In no instance should the initial payment be reported on the "Schedule of allowances" prior to the granting of relief by this office.

In cases where the applicants elect to perfect their entries in the manner required of a homestead entryman such elections should not be reported on the "Schedule of allowances." Upon issuance of final certificates in such cases the final entries, designated as "DL (final) 3-4-15 residence," showing date, serial number, and area only, should, however, be reported on the schedule in question.

When credit is allowed for final purchase money previously covered into the Treasury and the balance remaining is not sufficient to cover the final purchase money due, and an additional amount is collected to cover such deficiency, the receipt issuing for the remainder should show the number of receipt which originally issued for the final purchase money and the amount credited thereon.

The only moneys authorized to be collected in connection with final proofs offered in support of entries perfected under paragraph 2, are testimony fees in cases where the proof is taken in your office, and the purchase price where the entry is perfected under the commutation provisions of the homestead law. Where entries are perfected under paragraph 3, and the final proof depositions are taken in your office, the usual fee for transcribing the testimony may be charged, as in ordinary desert-land proofs, and, in addition, the balance (75 cents) of the purchase price should be collected. No commissions may be charged under any circumstances, and no testimony fees unless the proof is taken at your office.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

CIRCULAR No. 473.

RULE OF PRACTICE 46 AMENDED.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 16, 1916.

REGISTERS AND RECEIVERS,
United States Land Offices.

SIRS: In order that claimants may be allowed to submit final proof on an entry at any stage of contest proceedings, Rule of Practice 46 is hereby amended to read as follows:

RULE 46. The pendency of a contest will excuse the submission of final proof on the entry involved until a reasonable time after the disposition of the proceedings, but final or commutation proof may be submitted at any stage thereof. The payment of the final commissions or purchase money, as the case may be, should be deferred until the case is closed, when, if the contest is dismissed and the proof is found satisfactory, claimant will be allowed 30 days from notice within which to pay all sums due and furnish a nonalienation affidavit, upon receipt of which the proper form of final certificate will issue.

In such cases the fee for reducing the proof testimony to writing must be paid at the time the proof is submitted.

The final proof should be retained in the local office* until the record in the contest case is forwarded to the General Land Office, but will not be considered in determining the merits of the contest, though it may be used for the purpose of cross-examination during the trial.

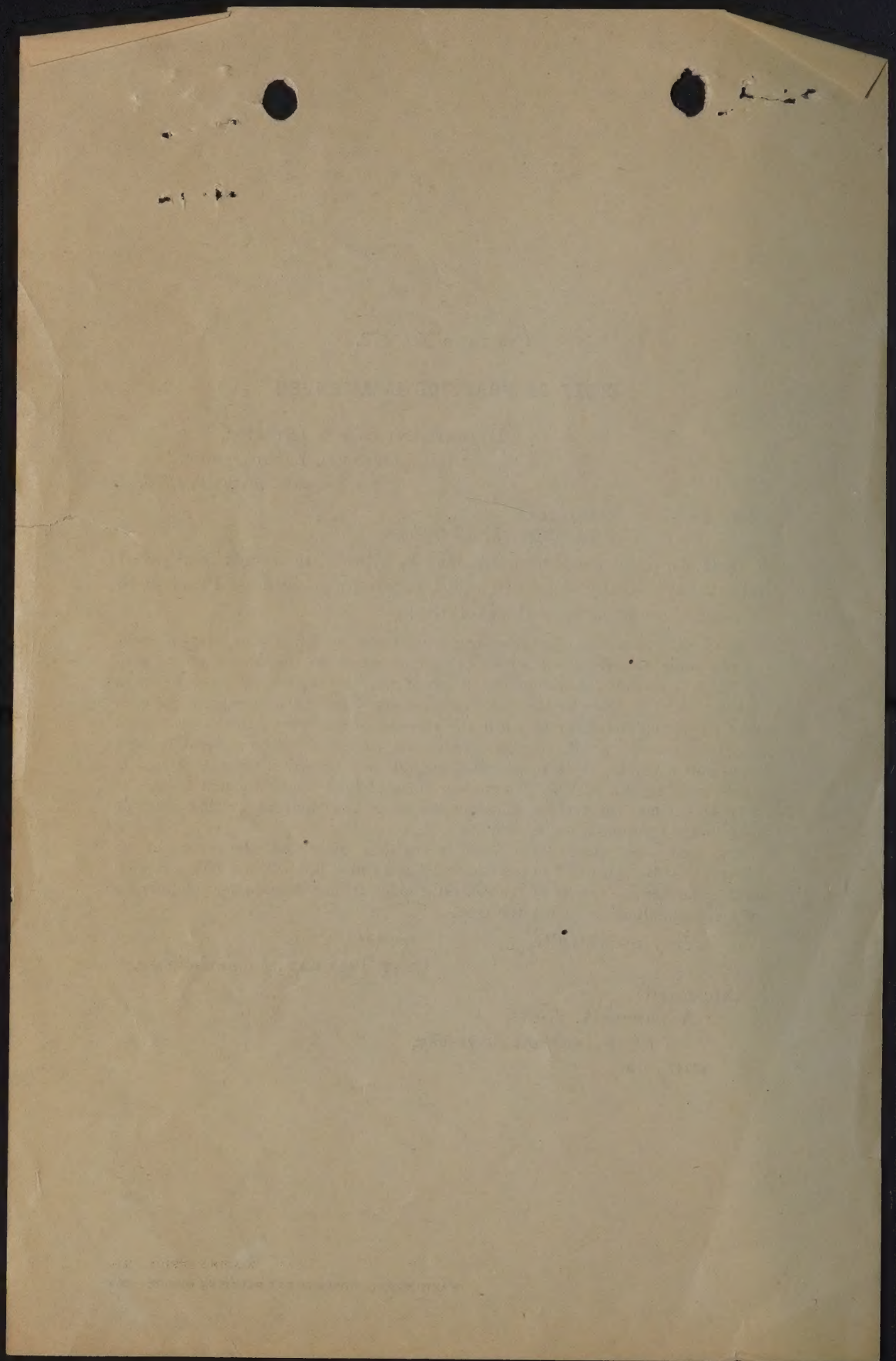
Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

43241°—16



Circular No. 474

Statutes and Regulations

Entries and Proofs Under the Desert Land Laws

REvised December 18, 1928

BLM Library
Denver Federal Center
Bldg. 85, OC-521
P.O. Box 25047
Denver, CO 80225

*Obsolete
Replaced by 1843*

CIRCULAR No. 474

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE

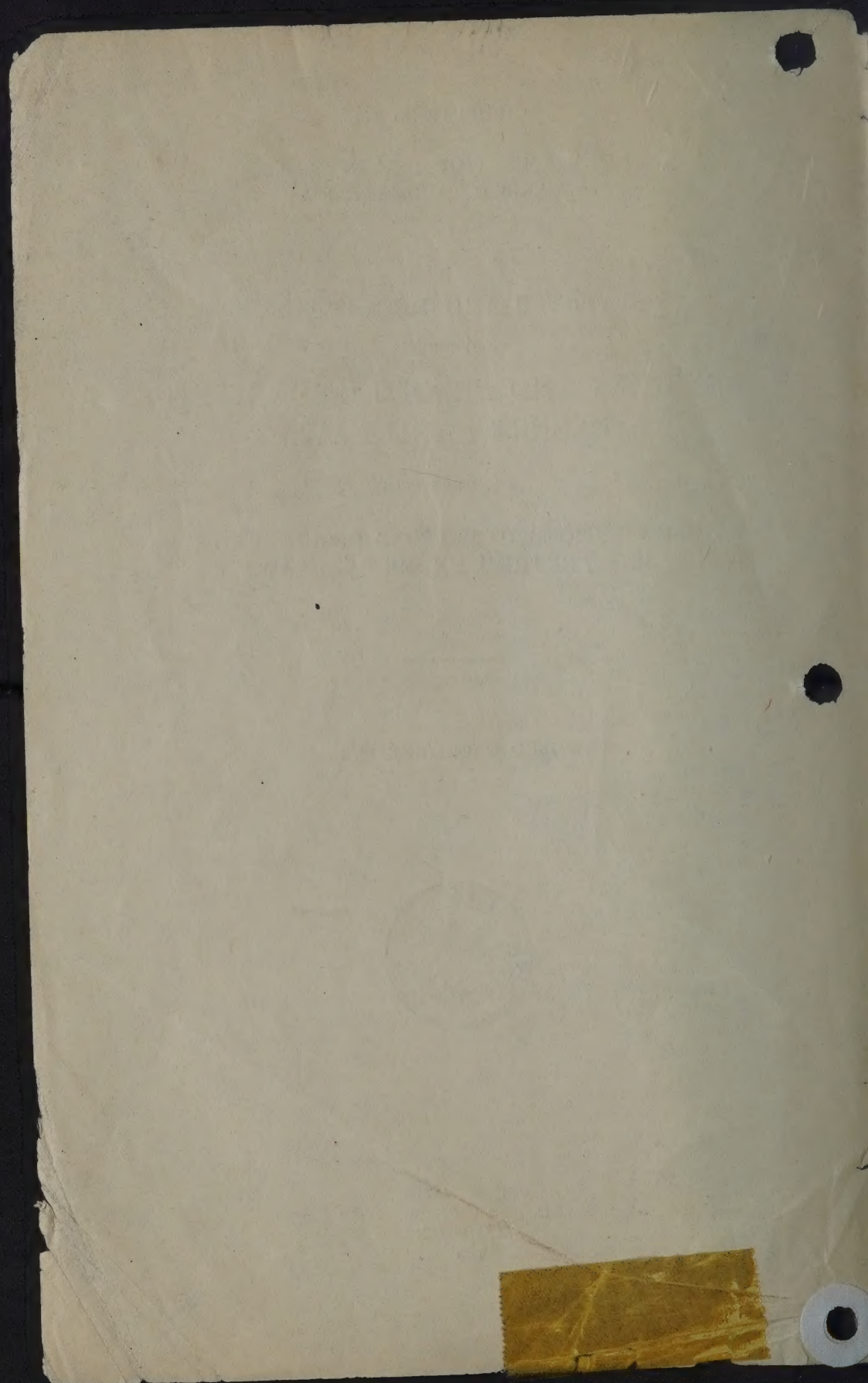
STATUTES AND REGULATIONS
GOVERNING
ENTRIES AND PROOFS UNDER THE
DESERT LAND LAWS

TOGETHER WITH
SUGGESTIONS TO PERSONS DESIRING TO
MAKE ENTRIES UNDER SAID LAWS

REVISED DECEMBER 18, 1928



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON
1929



STATUTES AND REGULATIONS GOVERNING ENTRIES AND PROOFS UNDER THE DESERT LAND LAWS

(CIRCULAR NO. 474)

(In this revision of the Regulations of May 18, 1916 (45 L. D. 345), changes have been made in paragraphs 2, 3, 4, 5, 8, 9, 11, 13, 14, 15, 16, 18, 21, 22, 28, 30, 31, 32, 34, 35, 36, 41, and 51.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 20, 1924.

1. All the more important laws and portions of laws governing the making of desert-land entries, assignments thereof, and the proofs required, will be found printed in full at the end of this circular.

It seems to be the purpose of the statutes to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the Western States through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have thus been rendered more productive and habitable.

Such reclamation is often a difficult and expensive undertaking, and desert-land entrymen sometimes find serious difficulty in complying with all the requirements of the law, particularly persons who possess little capital. All claimants should restrict their entries to only that quantity of land which they can reasonably expect to reclaim, even though such area be much less than may be lawfully entered. As the more accessible and easily appropriated streams become exhausted, it becomes necessary to convey water, often for very long distances, from more remote sources of supply; more elaborate and expensive systems of irrigation works are required, the cost of water rights is correspondingly increased, and individuals consequently find it necessary to unite their efforts in various forms of cooperative enterprise in order to secure the necessary capital. Nevertheless, a small tract of land, thoroughly reclaimed, with an adequate water supply obtained from a large, well-constructed irrigation system, may well be considered a very valuable piece of property, and more desirable than a larger tract only partially reclaimed or reclaimed from a small, private irrigation system less permanent and efficient in character.

ENTRIES AND PROOFS UNDER THE DESERT LAND LAWS—STATES IN
WHICH DESERT-LAND ENTRIES MAY BE MADE

2. The act of March 3, 1877, as amended by the act of March 3, 1891, provides for the making of desert-land entries in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

LANDS THAT MAY BE ENTERED AS DESERT LAND

3. As the desert-land law requires the artificial irrigation of any land entered thereunder, lands which are not susceptible of irrigation by practicable means are not deemed subject to entry as desert lands. The question as to whether any particular tract sought to be entered as desert land is in fact irrigable from the source proposed by the applicant will be investigated and determined before the application for entry is allowed. (See par. 13 of this circular.) In order to be subject to entry under the desert-land law, public lands must be not only irrigable but also surveyed, unreserved, unappropriated, nonmineral (except lands withdrawn, classified or valuable for coal, phosphate, nitrate, potash, oil, gas, or asphaltic minerals, as hereinafter set forth), nontimbered, and such as will not, without artificial irrigation, produce any reasonably remunerative agricultural crop by the usual means or methods of cultivation. In this latter class are those lands which, one year with another for a series of years, will not without irrigation produce paying crops, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. (37 L. D. 522 and 42 L. D. 524.)

Under the act of June 22, 1910 (36 Stat. 583), lands which have been withdrawn or classified as coal lands, or are valuable for coal, may, if desert in character as above defined, be entered under the desert-land law, provided such entry is made with a view to obtaining title with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same. By the act of July 17, 1914 (38 Stat. 509), similar provisions are made with respect to all lands which have been withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits.

Applications to make desert-land entries of lands embraced in applications, permits, or leases under the act of February 25, 1920 (41 Stat. 437), if in all other respects complete, will be treated in accordance with departmental instructions authorized by section 29 of said act. (See Instructions of October 6, 1920; 47 L. D. 474.) Applications to make desert-land entries of lands within a naval petroleum reserve must be rejected, as no desert-land entry may be allowed for such lands.

WHO MAY MAKE DESERT-LAND ENTRY

4. Any citizen of the United States 21 years of age, or any person of that age who has declared his intention of becoming a citizen of the United States, and who can truthfully make the affi-

davit specified in paragraphs 8 and 9 of these regulations, can make a desert-land entry. Thus, a woman, whether married or single, who possesses the necessary qualifications can make a desert-land entry, and, if married, without taking into consideration any entries her husband may have made.

Under existing law (act of September 22, 1922; 42 Stat. 1022), a native-born woman does not lose her citizenship by marriage to an alien unless he be ineligible to become a citizen of the United States; nor does a woman of alien birth acquire citizenship by marriage to a citizen of the United States. The marriage of an alien woman to a citizen of the United States takes the place of a declaration of intention. Under the act of March 2, 1907 (34 Stat. 1228), the citizenship status of the wife is declared to be that of the husband. Any woman seeking to make a desert-land entry, therefore, must show whether she is married or single, and, if married, must give the date of her marriage and the citizenship of her husband. If married between the dates herein specified, and her husband is naturalized or has declared his intention to become a citizen, or if the marital relation has ceased to exist, she may show that fact and, also, that she has resumed her American citizenship by one of the methods prescribed by the act of March 2, 1907. If after initiating a claim under the desert-land laws a woman marries, she must show at time of submission of final proof whether or not her husband is eligible to become a citizen of the United States.

A certified copy of the certificate of naturalization or declaration of intention, as the case may be, should accompany the application in every instance where required by the foregoing rules.

At the time of making final proof claimants of alien birth must have been admitted to citizenship, but a certified copy of the certificate of naturalization need not be furnished if it has already been filed in connection with the original declaration or with the proof of an assignment of the entry.

QUANTITY OF LAND THAT MAY BE ENTERED

5. Under the act of March 3, 1877, desert-land entries to the maximum of 640 acres were allowed, but by the act of March 3, 1891, the maximum area that may be embraced in a desert entry was reduced to 320 acres. This limitation must, however, be read in connection with the act of August 30, 1890 (26 Stat. 391), which limits to 320 acres, in the aggregate, the amount of land to which title may be acquired under all the public land laws, except the mineral laws, and the amendment thereof by the act of February 27, 1917 (39 Stat. 946), allowing one who has entered 320 acres under the enlarged homestead laws to make a desert-land entry. Hence, a person having initiated a claim under the homestead, timber and stone, preemption, or other agricultural land laws, or under all such laws, since August 30, 1890, say, to 160 acres in the aggregate, or 320 acres under the enlarged homestead act, and acquired title to the land so claimed, or who is claiming such an area under subsisting entries at the date of his desert-land application, may, if otherwise qualified, enter 160 acres of land under the desert land laws. In other words, he may have a desert-land entry for such

a quantity of land as, taken together with all land acquired and claimed by him under the other agricultural land laws since August 30, 1890, does not exceed 320 acres in the aggregate, or 480 acres if he shall have made an enlarged homestead entry of 320 acres. It is to be noted also that the act of June 22, 1910 (36 Stat. 583), provides that desert-land entries made for lands withdrawn or classified as coal lands, or valuable for coal, shall not exceed 160 acres in area, and that a like restriction is made by the act of July 17, 1914 (38 Stat. 509), with reference to desert-land entries made for land withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or valuable for those deposits.

Entry of lands within an irrigation district which the Secretary of the Interior has approved under the act of August 11, 1916 (39 Stat. 506), is limited to 160 acres. A special circular is issued under this act. (Circular No. 592, approved March 6, 1918; 46 L. D. 307.)

SECOND ENTRY

A person's right of entry under the desert land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking an assignment of an entry, in whole or in part, except, however, that under the act of September 5, 1914 (38 Stat. 712), if a person, otherwise duly qualified to make a desert-land entry, has previously filed an allowable application or made such entry or entries and through no fault of his own has lost, forfeited, or abandoned the same, such person may make another entry. In such case, however, it must be shown that the prior application, entry, or entries were made in good faith, and were lost, forfeited, or abandoned because of matters beyond the applicant's control, and that the applicant has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. As the assignment of an entry involves no loss, forfeiture, or abandonment thereof, but carries a benefit to the assignor, it is held to exhaust his right of entry under the desert land law. Hence, no person who has assigned such entry, in whole or in part, will be permitted thereafter to make another entry or to take one or any part thereof by assignment. Applications to make second entry must not be allowed by the registers and receivers, but must be forwarded by them, with appropriate recommendations, to the General Land Office, accompanied by the applicant's affidavit giving data from which his former application, or applications, entry, or entries may be identified (preferably its series and number, as well as a description of the tract by section, township, and range), and showing (a) what examination of the land and what inquiries as to its character he made prior to filing his previous application or applications for entry, and what reason he had to believe that the required proportion of the tracts could be reclaimed by him through irrigation; (b) what improvements he made upon the land, describing in detail their nature and cost, the date of his abandonment of the claim or claims and the reason therefor, and whether he ever executed a relinquishment of the entry or entries; and (c) what consideration, if any, he received for abandoning or relinquishing the entry or entries, and whether he

sold the improvements thereon, giving full details as to such sale, if any, including the date thereof and the consideration received. This affidavit must be executed before a proper officer (see par. 11 of this circular) and must be corroborated on all matters susceptible of corroboration by at least one witness having knowledge of the facts; or, there may be several witnesses, each testifying on some material point. The affidavits of the witnesses may be executed before any officer authorized to administer oaths and having an official seal.

If the commissioner should find that the applicant is qualified to make a second entry, the application will be returned to the local officers for appropriate action in accordance with paragraph 13 of this circular.

LAND MUST BE IN COMPACT FORM

6. Land entered under these laws should be in compact form, which means that it should be as nearly a square form as possible. Where, however, it is impracticable, on account of the previous appropriation of adjoining lands or on account of the topography of the country, to take the land in a compact form, all the facts regarding the situation, location, and character of the land sought to be entered and the surrounding tracts should be stated, in order that the General Land Office may determine whether, under all the circumstances, the entry should be allowed in the form sought. Entry-men should make a complete showing in this regard and should state the facts and not the conclusions they derive from the facts, as it is the province of the Land Department of the Government to determine whether or not, from the facts stated, the entry should be allowed. Under no circumstances, however, can one entry be made for two or more separate tracts or for two tracts which touch each other at only a single point.

HOW PREFERENCE RIGHT MAY BE ACQUIRED ON UNSURVEYED LAND

7. Prior to the act of March 28, 1908, a desert-land entry could embrace unsurveyed lands, but since the date of that act desert-land entries may not be made of unsurveyed lands. This act provides, however, that any individual qualified to make entry of desert lands under the desert-land acts who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area 320 acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said acts, in conformity with the public-land surveys, within 90 days after the filing of the approved plat of survey in the district land office.

To preserve this preference right the work of reclamation must be continued up to the filing of the plat of survey, unless the reclamation of the land is completed before that time, and in that event the claimant must continue to cultivate and occupy the land until the survey is completed and the plat filed. A mere perfunctory occupation of the land, such as staking off the claim or posting notices thereof on the land claimed, will not secure the preference right as against an adverse claimant. While actual settlement and residence upon the land, as required under the homestead law, are not neces-

sary, the possession and improvements must be such as to conform to the requirements of the desert-land law and must evidence good faith on the part of the claimant.

HOW TO PROCEED TO MAKE A DESERT-LAND ENTRY

8. A person who desires to make entry under the desert land laws must file with the register and receiver of the proper land office a declaration or application, under oath, showing that he is a citizen of the United States, or has declared his intention to become such citizen; that he is 21 years of age or over; and that he is also a bona fide resident of the State in which the land sought to be entered is located, except in the State of Nevada, where the qualification as to citizenship is that of the United States only (41 Stat. 1086). He must also state that he has not previously exercised the right of entry under the desert land laws by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by having taken one by assignment; that he has personally examined every legal subdivision of the land sought to be entered; that he has not, since August 30, 1890, acquired title, under any of the agricultural land laws, to lands which, together with the land applied for, will exceed in the aggregate 320 acres, or 480 acres in case he has made an enlarged homestead for 320 acres; and that he intends to reclaim the lands applied for by conducting water thereon within four years from the date of his application. This declaration must contain a description of the land by legal subdivisions, section, township, and range. If the application is made for lands, withdrawn or classified as coal lands or for lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or valuable therefor, the applicant must also state in his declaration that the same is made in accordance with and subject to the act of June 22, 1910 (36 Stat. 583), or the act of July 17, 1914 (38 Stat. 509), as the case may be.

As to lands embraced in applications, permits, or leases under the act of February 25, 1920, see paragraph 3 of this circular.

9. Special attention is called to the terms of this application, as they require a personal knowledge by the entryman of the lands intended to be entered. The affidavit, which is made a part of the application, may not be made by an agent or upon information and belief, and the register and receiver must reject all applications in which it is not made to appear that the statements contained therein are made upon the applicant's own knowledge, obtained from a personal examination of the land. The blank spaces in the application must be filled in with a complete statement of the facts showing the applicant's acquaintance with the land and how he knows it to be desert land. This declaration must be corroborated by the affidavits of two reputable witnesses, who also must be personally acquainted with the land, and they must state the facts regarding the condition and situation of the land upon which they base the opinion that it is subject to desert entry. The declaration of applicant and the affidavit of his two witnesses must in every instance be made at the same time and place and before the same officer. (As to officers authorized to administer oaths in such cases, see par. 11 of this circular.)

The statements in the blank form of declaration and accompanying affidavits as to present character of the land may be modified so as to show the facts in any case wherein application is made for entry of lands reclaimed or partially reclaimed, by applicant, before survey, under the provisions of the act of March 28, 1908; as to a former application or entry, in case application is made for a second entry under the provisions of the act of September 5, 1914; as to the character of the land with respect to coal deposits in case application is made under the provisions of the act of June 22, 1910, for lands withdrawn or classified as coal lands, or valuable for coal; and with respect to phosphate, nitrate, potash, oil, gas, and asphaltic minerals in case application is made under the provisions of the act of July 17, 1914, for lands withdrawn, classified, or reported as containing those substances, or valuable therefor.

As to lands embraced in applications, permits, or leases under the act of February 25, 1920, see paragraph 3 of this circular.

10. Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their post-office addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also; and where the residence is in a city the street and number must be given. It is especially important to claimants that upon changing their post-office addresses they promptly notify the local officers of such change, for in case of failure to do so their entries may be canceled upon notice sent to the address of record but not received by them. The register and receiver will be careful to note the post-office address on their records.

11. The application and corroborating affidavits and all other proofs, affidavits, and oaths of any kind whatsoever required by law to be made by applicants and entrymen and their corroborating witnesses may be executed before the register or receiver of the land district in which the land is located, or before a United States commissioner, or a judge or clerk of a court of record, or before a duly qualified deputy clerk of court who regularly acts for the clerk and performs duties of the office in the name of his principal at the county seat, in the county or land district in which the land is situated, without any showing as to the nearness or accessibility of such officer, or outside both the county and land district, upon a showing by affidavit, satisfactory to the Commissioner of the General Land Office, that the officer so acting was, because of topographic or geographic conditions, nearer or more accessible to the land. Reference is had to Circular No. 884, dated March 23, 1923 (49 L. D. 497), and Circular No. 894, dated May 8, 1923 (49 L. D. 586).

The application is not acceptable if executed more than 10 days before its filing at the local office.

EVIDENCE AS TO WATER RIGHT MUST ACCOMPANY APPLICATION

12. No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim

all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right. If applicant intends to procure water from an irrigation district, corporation, or association, but is unable to obtain a contract for the water in advance of the allowance of his entry, then he must furnish, in lieu of the contract, some written assurance from the responsible officials of such district, corporation, or association that, if his entry be allowed, applicant will be able to obtain from that source the necessary water. All applications not accompanied by the evidence above indicated will be rejected.

PROPOSED IRRIGATION SYSTEM MUST BE PRACTICABLE

13. At the time of filing the declaration with the register and receiver the applicant must also file plans describing in detail the following: Source of water supply; character of the irrigation works constructed, in course of construction, or proposed to be constructed, i. e., reservoirs for storage, canals, flumes, or other methods by which water is to be conserved and conveyed to the land; if by direct diversion, the character and volume of the flow of the streams or springs, whether perennially flowing or intermittent. If the works have not been constructed, it must be shown whether they are to be built by an irrigation district, a corporation, or an association, and a general description of the proposed plan must be furnished. It must be shown in connection with any proposed plan whether, and by whom, surveys and investigations have been made which demonstrate the existence of a sufficient water supply and the feasibility of the proposed works to convey water to the land. If the applicant individually, or in association with others, proposes to construct irrigation works, a sworn statement must accompany the declaration, containing a general description of the proposed works, an estimate of the cost, and such other data as will enable the department to determine the sufficiency of the water supply and the feasibility of the proposed works to convey water to the lands to be irrigated. If the irrigation is proposed by means of artesian wells or by pumping from nonartesian underground sources of water supply, sworn evidence must be submitted as to the existence of such water supply upon or near the land involved, including a statement as to other wells theretofore sunk and affording a water supply to adjoining or near-by lands.

With respect to the land itself, a specific showing must be submitted as to its approximate altitude, character of the soil, the approximate irrigable area of each legal subdivision, and the position and direction of the proposed permanent main and lateral ditches on the land, and that the land is of such contour that it can be irrigated from the proposed system. The map required to be filed by section 4 of the act of March 3, 1891 (26 Stat. 1095), must be sufficiently definite and accurate (preferably, but not necessarily, prepared by a licensed engineer) to show the plan for conducting water to the land to be irrigated. The register and receiver will carefully examine the evidence submitted in such declarations, and either reject defective declarations or require additional evidence to be filed.

At the time of filing his declaration, plans, and the statements submitted therewith the applicant must pay the receiver the sum of 25 cents per acre for the lands therein described, the declaration to be given its proper serial number at that time, in accordance with existing regulations. No rights to the land are initiated by the filing of an application unless this sum is paid or tendered. The receiver will issue a receipt for the money, and after proper notations have been made on the local office records the application will be transmitted to the proper chief of field division for report as to the sufficiency of the alleged water supply and the feasibility of the proposed plans. The register and receiver will furnish the chief of field division any facts in their knowledge with respect to the land, the water supply, or the proposed plan of irrigation, including the financial responsibility and general ability of the irrigation districts, corporations, or associations which propose to construct works for the reclamation of such land. In all cases the register and receiver will certify as to the status of the lands as shown by their records, and when forwarding an application for report they will attach all papers filed by the applicant. No application will be forwarded to the chief of field division until all evidence required as aforesaid has been furnished by the applicant; nor, in the case of an application for second entry, until the application has been transmitted to the Commissioner of the General Land Office for consideration and returned by him to the local officers.

When an application is received by the chief of field division he will have same considered by a field examiner, who will make a written report thereon recommending the allowance or rejection of the application. If such report is favorable and the chief of field division is of the opinion that the entry should be allowed, he will return the application to the register and receiver, with the report and recommendation to that effect, whereupon the register and receiver will pass upon it in regular order in the light of the report, which is to be attached to the application and become a part of the record, and in the absence of any objection will sign the certificate at the end of the declaration under date of its allowance, and advise the applicant.

If, however, the chief of field division is of the opinion that the entry should not be allowed, he will have a full report prepared on the application and transmit the entire record to the General Land Office for consideration and action, advising the register and receiver thereof.

In the event that an applicant alleges a company, an association, or an irrigation district as the proposed source of water supply, upon which report has not been submitted, the chief of field division will cause an investigation to be made of such project and have a report submitted thereon to the commissioner, making a definite recommendation as to the allowance of original entries under the project, and will transmit the application involved with the report.

If the project alleged as the source of water supply has been reported upon, but no action on such report has been taken by the commissioner, the chief of field division will transmit the application to the General Land Office with appropriate recommendation.

In the event the applicant alleges a project which has been passed upon by the commissioner, the chief of field division will consider same in accordance with the conclusions reached, and in the event that favorable action is warranted will return the papers to the register and receiver with proper report and recommendation. In case adverse action is necessary, the chief of field division will transmit the application to the General Land Office with proper recommendation.

Should the commissioner, after consideration of the examiner's report and the showing made by the applicant, deny the right to make entry, the applicant will be allowed the right to apply for a hearing or to appeal, as he may desire.

If an application is not returned by the chief of field division in time to be considered and allowed by the register and receiver and transmitted with the returns for the month during which filed, the register will note "To C. F. D." (giving date) in the remarks column of the "General schedule of serial numbers," and will forward with the returns for that month a separate report on Form 4-030 for each application so held by the chief of field division.

Registers and receivers will render any reasonable assistance to applicants and witnesses in preparing their declarations and affidavits, but it is no part of the duty of these officers to prepare, or assist in preparing, the map, plans, or evidence of water right required to be filed with the declaration. Intending applicants should cause all such documents and papers to be prepared in advance and have them ready for filing with the declarations.

ASSIGNMENTS

14. While by the act of March 3, 1891, assignments of desert-land entries were recognized, the Land Department, largely for administrative reasons, held that a desert-land entry might be assigned as a whole or in its entirety, but refused to recognize the assignment of only a portion of an entry. The act of March 28, 1908, however, provides for an assignment of such entries, in whole or in part, but this does not mean that less than a legal subdivision may be assigned. Therefore no assignment, otherwise than by legal subdivisions, will be recognized. The legal subdivisions assigned must be contiguous. (With regard to the assignment of desert-land entries within Government reclamation projects, see General Reclamation Circular.)

15. The act of March 28, 1908, also provides that no person may take a desert-land entry by assignment unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not at least 21 years of age and, excepting Nevada, a resident citizen of the State wherein the land involved is located; or if he is not a citizen of the United States, or a person who has declared his intention to become a citizen thereof; or, if he has made a desert-land entry in his own right and is not entitled under the act of September 5, 1914, to make a second entry, he can not take such an entry by assignment. The language of the act indicates that the taking of an entry by assignment is equivalent to the making of an entry, and this being so, no person is allowed to take more than one entry by assignment, unless it be done as the exercise of a right of second entry. The right of entry under the desert-land law is exhausted either by filing an allowable application and withdrawing it prior

to its allowance or by making an entry or by taking one by assignment, unless such entry be subsequently lost, forfeited, or abandoned because of matters beyond the claimant's control.

A person who has the right to make a second desert-land entry under the act of September 5, 1914, may exercise that right by taking an assignment of a desert-land entry, or part of such entry, if he is otherwise qualified to make a desert-land entry for the particular tract assigned. The right to make a second desert-land entry, however, is not possessed by any person who has assigned some former entry or part thereof. (See par. 5.)

The act of March 28, 1908, also provides that no assignment to or for the benefit of any corporation shall be authorized or recognized.

16. As stated above, desert-land entries may be assigned, in whole or in part, and as evidence of the assignment there should be transmitted to the General Land Office the original deed of assignment or a certified copy thereof. Where the deed of assignment is recorded a certified copy may be made by the officer who has custody of the record. Where the original deed is presented to an officer qualified to take proof in desert-land cases a copy certified by such officer will be accepted. Attention is called to the fact that copies of deeds of assignment certified by notaries public or justices of the peace, or, indeed, any other officer than those who are qualified to take proofs and affidavits in desert-land cases, will not be accepted.

An assignee must file with his deed of assignment an affidavit (Form 4-274c) showing his qualifications to take the entry assigned to him. He must show what applications or entries, if any, have been made by him or what entries assigned to him under the agricultural public-land laws, and he must also show his qualifications as a citizen of the United States; that he is 21 years of age or over; and also that he is a resident citizen of the State in which the land assigned to him is situated, except in the State of Nevada, where citizenship of the United States only is required. If the assignee is not a native-born citizen of the United States, he should also furnish a certified copy of his declaration of intention to become a citizen or a certified copy of his certificate of naturalization, as the case may be. If the assignee is a woman, she should in all cases state whether or not she is married, and if so, show that in accordance with the rules explained in paragraph 4 her citizenship is not lost by reason of the alienage of her husband. In short, the assignee must prove that he possesses all the qualifications necessary to enable him to make a desert-land entry for the land proposed to be assigned were it subject to entry. Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by the applicant prior to such payment. (6 L. D. 541; 33 L. D. 152.) An assignment made on the day of such payment, or soon thereafter, is treated as suggesting fraud, and such cases will be carefully scrutinized. The provisions of law authorizing the assignment of desert entries, in whole or in part, furnish no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent and thereafter to proceed with the submission of final proof in furtherance of such

contract. (34 L. D. 383.) The sale of land embraced in an entry at any time before final payment is made must be regarded as an assignment of the entry, and in such cases the person buying the land must show that he possesses all the qualifications required of an assignee. (29 L. D. 453.) The assignor of a desert-land entry may execute the assignment before any officer authorized to take acknowledgments of deeds, but the assignee must execute the affidavit as to his qualifications (Form 4-274c) and all other required oaths and affidavits before some one of the officers specified in paragraph 11 of this circular.

No assignments of desert-land entries or parts of entries are conclusive until examined in the General Land Office and found satisfactory and the assignment recognized. When recognized, however, the assignee takes the place of the assignor as effectually as though he had made the entry, and is subject to any requirement that may be made relative thereto. The assignment of a desert-land entry to one disqualified to acquire title under the desert land law, and to whom, therefore, recognition of the assignment is refused by the General Land Office, does not of itself render the entry fraudulent, but leaves the right thereto in the assignor. In such connection, however, see 42 L. D. 90 and 48 L. D. 519.

After final proof and payment have been made the land may be sold and conveyed to another person without the approval of the General Land Office, but all such conveyances are nevertheless subject to the superior rights of the United States, and the title so obtained would fall if it should be finally determined that the entry was illegal or that the entryman had failed to comply with the law.

Lands embraced in unperfected desert-land entries are not subject to taxation by the State authorities, nor to levy and sale under execution to satisfy judgments against the entrymen.

Lands embraced in desert-land entries within an irrigation district which the Secretary of the Interior has approved under the act of August 11, 1916 (39 Stat. 506), may be taxed and otherwise dealt with as provided by said act. (See Circular No. 592, referred to in par. 5.)

A desert-land entryman may, however, mortgage his interest in the entered land if, by the laws of the State in which the land is situated, a mortgage of land is regarded as merely creating a lien thereon and not as a conveyance thereof. The purchaser at a sale had for the foreclosure of such mortgage may be recognized as assignee upon furnishing proof of his qualifications to take a desert-land entry by assignment. Transferees, after final proof, mortgagees, or other encumbrancers may file in the proper local land office written notice stating the nature of their claims, and they will thereupon become entitled to receive notice of any action taken by the Land Department with reference to the entry. The register and receiver will report all such claims by separate letters, to be forwarded with their current returns to the General Land Office.

ANNUAL PROOF

17. In order to test the sincerity and good faith of claimants under the desert land laws and to prevent the segregation for a number of years of public lands in the interest of persons who have no intention

to reclaim them, Congress, in the act of March 3, 1891, made the requirement that a map be filed at the initiation of the entry showing the mode of contemplated irrigation and the proposed source of water supply, and that there be expended yearly for three years from the date of the entry not less than \$1 for each acre of the tract entered, making a total of not less than \$3 per acre, in the necessary irrigation, reclamation, and cultivation of the land, in permanent improvements thereon, and in the purchase of water rights for the irrigation thereof, and that at the expiration of the third year a map or plan be filed showing the character and extent of the improvements placed on the claim. Said act, however, authorizes the submission of final proof at an earlier date than four years from the time the entry is made in cases wherein reclamation has been effected and expenditures of not less than \$3 per acre have been made. Proof of these expenditures must be made before some officer authorized to administer oaths in public-land cases. (See par. 11 hereof.)

This proof, which is known as yearly or annual proof, must consist of the affidavits of "two or more credible witnesses," each of whom must have personal knowledge that the expenditures were made for the purpose stated in the proof. The testimony of such witnesses may be supplemented by the affidavit of the claimant, at his option, but he is not required by law to make oath as to the annual expenditures upon or for the benefit of the land. (42 L. D. 165.) Annual proofs must contain itemized statements showing the manner in which expenditures were made.

ACCEPTABLE EXPENDITURES

18. Expenditures for the construction and maintenance of storage reservoirs, dams, canals, ditches, and laterals to be used by claimant for irrigating his land; for roads where they are necessary; for erecting stables, corrals, etc.; for digging wells, where the water therefrom is to be used for irrigating the land; for stock or interest in an approved irrigation company, or for taxes paid to an approved irrigation district, through which water is to be secured to irrigate the land; and for leveling and bordering land proposed to be irrigated, will be accepted. Expenditures for fencing all or a portion of the claim, for surveying for the purpose of ascertaining the levels for canals, ditches, etc., and for the first breaking or clearing of the soil, are also acceptable.

The value to be attached to, and the credit to be given for, an expenditure for works or improvements is the reasonable value of the work done or improvement placed upon the land, according to the market price therefor, or for similar work or improvements prevailing in the vicinity, and not the amount alleged by a claimant to have been expended, nor the mere proof of expenditures, as exhibited by checks or other vouchers. (*Bradley v. Vasold*, 36 L. D. 106.) (See Circular No. 933, dated April 26, 1924.)

EXPENDITURES NOT ACCEPTABLE

Expenditures for cultivation after the soil has been first prepared may not be accepted, because the claimant is supposed to be compensated for such work by the crops to be reaped as a result of culti-

vation. Expenditures for surveying the claim in order to locate the corners of same may not be accepted. The cost of tools, implements, wagons, and repairs to same, used in construction work, may not be computed in cost of construction. Expenditures for material of any kind will not be allowed unless such material has actually been installed or employed in and for the purpose for which it was purchased. For instance, if credit is asked for posts and wire for fences or for pump or other well machinery, it must be shown that the fence has been actually constructed or the well machinery actually put in place. No expenditures can be credited on annual proofs upon a desert-land entry unless made on account of that particular entry, and expenditures once credited can not be again applied. This rule applies to second entries as well as to original entries, and a claimant who relinquishes his entry and makes second entry of the same land under the act of September 5, 1914, can not receive credit on annual proofs upon the second entry for expenditures made on account of the former entry. (41 L. D. 601 and 42 L. D. 523.)

Expenditures for the clearing of the land will not receive credit in cases where the vegetation or brush claimed to have been cleared away has not been actually removed by the roots. Therefore, expenditures for clearing, where as a matter of fact there has been only crushing, or rolling, or what is known in some localities as "railing" the land, will not be accepted. (See Circular No. 933, dated April 26, 1924.)

No expenditures for stock or interest in an irrigation company, through which water is to be secured for irrigating the land, will be accepted as satisfactory annual expenditure until a special agent, or other authorized officer, has submitted a report as to the resources and reliability of the company, including its actual water right, and such report has been favorably acted upon by the General Land Office. The stock purchased must carry the right to water, and it must be shown that payment in cash has been made at least to the extent of the amount claimed as expenditure for the purchase of such stock in connection with the annual proof submitted, and such stock must be actually owned by the claimants at the time of the submission of final proof.

Registers and receivers are instructed to examine carefully all annual proofs filed and are authorized to suspend them, with notice to claimants to cure defects within 30 days, or to reject them, subject to the usual right of appeal to the Commissioner of the General Land Office. These proofs are to be forwarded with the regular monthly returns. However, no annual proof which alleges an expenditure for stock or interest in an irrigation company should be rejected merely because the expenditure was of that character unless such rejection be warranted under instructions issued by the Commissioner of the General Land Office in acting upon the special agent's report on the particular company in question. If no such instructions have been issued, and the company referred to in the annual proof be one on which the local officers have not previously requested a report from the proper chief of field division, they will immediately call for such report and advise the commissioner thereof by special letter. They will also indorse the fact and date of the call upon the margin of the annual proof and forward it to the General Land Office with the regular returns.

NOTICE TO DELINQUENT CLAIMANTS

Local officers will examine their records frequently for the purpose of ascertaining whether all annual proofs due on pending desert-land entries have been made, and in every case where the claimant is in default in that respect they will send him notice and allow him 60 days in which to submit such proof. If the proof is not furnished as required the fact that notice was served upon the claimant should be reported to the General Land Office, with evidence of service, whereupon the entry will be canceled. During the pendency of a Government proceeding initiated by such notice the entry will be protected against a private contest charging failure to make the required expenditures, and such contest will neither defeat the claimant's right to equitably perfect the entry as to the matter of expenditures during the 60 days allowed in the notice nor secure to the contestant a preference right in event the entry be canceled for default under said notice.

EXTENSION OF TIME FOR FILING ANNUAL PROOF NOT ALLOWED

The law makes no provision for an extension of time in which to file annual proof on desert-land entries not embraced within the exterior boundaries of any withdrawal or irrigation project under the reclamation act of June 17, 1902 (32 Stat. 388), and extensions for said purpose can not therefore be granted. However, where a township is suspended from entry for the purpose of resurvey thereof the time between the date of suspension and the filing in the local office of the new plat of survey will be excluded from the period accorded by law for the reclamation of land under a desert entry within such township and the statutory life of the entry extended accordingly (40 L. D. 223). During the continuance of the extension the claimant may, at his option, defer the making of annual expenditures and proof thereof.

19. Nothing in the statutes or regulations should be construed to mean that the entryman must wait until the end of the year to submit his annual proof, because the proof may be properly submitted as soon as the expenditures have been made. Proof sufficient for the three years may be offered whenever the amount of \$3 an acre has been expended in reclaiming and improving the land, and thereafter annual proof will not be required.

FINAL PROOF

20. The entryman, his assigns, or, in case of death, his heirs or devisees, are allowed four years from date of the entry within which to comply with the requirements of the law as to reclamation and cultivation of the land and to submit final proof, but final proof may be made and patent thereon issued as soon as there has been expended the sum of \$3 per acre in improving, reclaiming, and irrigating the land, and one-eighth of the entire area entered has been properly cultivated and irrigated, and when the requirements of the desert land laws as to water rights and the construction of the necessary reservoirs, ditches, dams, etc., have been fully complied with.

NOTICES OF INTENTION TO MAKE FINAL PROOF

When an entryman has reclaimed the land and is ready to make final proof, he should apply to the register and receiver for a notice of intention to make such proof. This notice must contain a complete description of the land, give the number of the entry and name of the claimant, and must bear an indorsement specifically indicating the source of his water supply. If the proof is made by an assignee, his name, as well as that of the original entryman, should be stated. It must also show when, where, and before whom the proof is to be made. Four witnesses may be named in this notice, two of whom must be used in making proof. Care should be exercised to select as witnesses persons who are familiar, from personal observation, with the land in question, and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice.

PUBLICATION OF FINAL-PROOF NOTICE

21. This notice must be published once a week for five successive weeks in a newspaper of established character and general circulation published nearest the lands (see 38 L. D. 131; 43 L. D. 216), and must also be posted in a conspicuous place in the local land office for the same period of time. The claimant must pay the cost of the publication, but it is the duty of registers to procure the publication of proper final-proof notices, and registers should accordingly exercise the utmost care in that behalf. (40 L. D. 459.) The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the affidavit of the publisher of the newspaper or by some one authorized to act for him. The register will certify to the posting of the notice in the local office.

22. On the day set in the notice (or, in the case of accident or unavoidable delay, within 10 days thereafter) and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation, cultivation, and improvement of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as a part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others. In every instance where, for any reason whatever, final proof is not submitted within the four years prescribed by law, or within the period of an extension granted for submitting such proof, an affidavit should be filed by claimant, with the proof, explaining the cause of delay.

OFFICERS QUALIFIED TO TAKE FINAL PROOF

The final proof may be made before any one of the officers named and under the conditions prescribed in paragraph 11.

No showing by affidavit need be made where final proof is taken outside the county or land district in which the land is located, if the proof be taken in the town or city where the newspaper is published in which the final-proof notice is printed.

SHOWING REQUIRED ON FINAL PROOF AS TO IRRIGATION, CULTIVATION, AND WATER RIGHTS

23. The final proof must show specifically the source and volume of the water supply and how it was acquired and how it is maintained. The number, length, and carrying capacity of all ditches to and on each of the legal subdivisions must also be shown. The claimant and the witnesses must each state in full all that has been done in the matter of reclamation and improvements of the land, and must answer fully, of their own personal knowledge, all of the questions contained in the final-proof blanks. They must state plainly whether at any time they saw the land effectually irrigated, and the different dates on which they saw it irrigated should be specifically stated.

24. While it is not required that all of the land shall have been actually irrigated at the time final proof is made, it is necessary that the one-eighth portion which is required to be cultivated shall also have been irrigated in a manner calculated to produce profitable results, considering the character of the land, the climate, and the kind of crops being grown. (Alonzo B. Cole, 38 L. D. 420.) The cultivation and irrigation of the one-eighth portion of the entire area entered may be had in a body on one legal subdivision or may be distributed over several subdivisions. The final proof must clearly show that all of the permanent main and lateral ditches necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation. If pumping be relied upon as the means of irrigation, the plant installed for that purpose must be of sufficient capacity to render available enough water for all the irrigable land. If there are any high points or any portions of the land which for any reason it is not practicable to irrigate, the nature, extent, and situation of such areas in each legal subdivision must be fully stated. If less than one-eighth of a smallest legal subdivision is practically susceptible of irrigation from claimant's source of water supply and no portion thereof is used as a necessary part of his irrigation scheme, such subdivision must be relinquished. (43 L. D. 269.)

25. As a rule, actual tillage of one-eighth of the land must be shown. It is not sufficient to show only that there has been a marked increase in the growth of grass or that grass sufficient to support stock has been produced on the land as a result of irrigation. If, however, on account of some peculiar climatic or soil conditions, no crops except grass can be successfully produced, or if actual tillage will destroy or injure the productive quality of the soil, the actual

production of a crop of hay of merchantable value will be accepted as sufficient compliance with the requirements as to cultivation. (32 L. D. 456.) In such cases, however, the facts must be stated and the extent and value of the crop of hay must be shown, and, as before stated, that same was produced as a result of actual irrigation.

26. In every case where the claimant's water right is founded upon contract or purchase the final proof must embrace evidence which clearly establishes the fact and legal sufficiency of that right. If claimant's ownership of such right has already been evidenced in connection with the original entry or some later proceeding, then the final proof must show his continued possession thereof. If the water right relied on is obtained under claimant's appropriation, the final proof, considered together with any evidence previously submitted in the matter, must show that the claimant has made such preliminary filings as are required by the laws of the State in which the land is located, and that he has also taken all other steps necessary under said laws to secure and perfect the claimed water right. In all cases the water right, however it be acquired, must entitle the claimant to the use of a sufficient supply of water to irrigate successfully all the irrigable land embraced in his entry, notwithstanding that the final proof need only show the actual irrigation of one-eighth of that area.

In those States where entrymen have made applications for water rights and have been granted permits but where no final adjudication of the water right can be secured from the State authorities owing to delay in the adjudication of the watercourses or other delay for which the entrymen are in no way responsible, proof that the entrymen have done all that is required of them by the laws of the State, together with proof of actual irrigation of one-eighth of the land embraced in their entries, may be accepted. This modification of the rule that the claimant must furnish evidence of an absolute water right will apply only in those States where under the local laws it is impossible for the entryman to secure final evidence of title to his water right within the time allowed him to submit final proof on his entry, and in such cases the best evidence obtainable must be furnished. (35 L. D. 305.)

It is a well-settled principle of law in all of the States in which the desert land acts are operative that actual application to a beneficial use of water appropriated from public streams measures the extent of the right to the water, and that failure to proceed with reasonable diligence to make such application to beneficial use within a reasonable time constitutes an abandonment of the right. (Wiel's Water Rights in the Western States, sec. 172.) The final proof, therefore, must show that the claimant has exercised such diligence as will, if continued, under the operation of this rule result in his definitely securing a perfect right to the use of sufficient water for the permanent irrigation and reclamation of all of the irrigable land in his entry. To this end the proof must at least show that water which is being diverted from its natural course and claimed for the specific purpose of irrigating the lands embraced in claimant's entry, under a legal right acquired by virtue of his own or his grantor's compliance with the requirements of the State laws governing the appropriation of public waters, has ac-

tually been conducted through claimant's main ditches to and upon the land; that one-eighth of the land embraced in the entry has been actually irrigated and cultivated; that water has been brought to such a point on the land as to readily demonstrate that the entire irrigable area may be irrigated from the system; and that claimant is prepared to distribute the water so claimed over all of the irrigable land in each smallest legal subdivision in quantity sufficient for practical irrigation as soon as the land shall have been cleared or otherwise prepared for cultivation. The nature of the work necessary to be performed in and for the preparation for cultivation of such part of the land as has not been irrigated should be carefully indicated, and it should be shown that the said work of preparation is being prosecuted with such diligence as will permit of beneficial application of appropriated water within a reasonable time.

Desert-land claimants should bear in mind that a water right and a water supply are not the same thing and that the two are not always or necessarily found together. Strictly speaking, a perfect and complete water right for irrigation purposes is confined to and limited by the area of land that has been irrigated with the water provided thereunder. Under the various State laws, however, an inchoate or incomplete right may be obtained which is capable of ripening into a perfect right if the water is applied to beneficial use with reasonable diligence. A person may have an apparent right of this kind for land which he has not irrigated, and which, moreover, he never can irrigate because of the lack of available water to satisfy his apparent right. Such an imperfect right, of course, can not be viewed as meeting the requirements of the desert land law which contemplates the eventual reclamation of all the irrigable land in the entry. Therefore, and with special reference to that portion of the irrigable land of an entry not required to be irrigated and cultivated before final proof, an incomplete (though real) water right will not be acceptable if its completion appears to be impossible because there is no actual supply of water available under the appropriation in question.

27. Where the water right claimed in any final proof is derived from an irrigation project it must be shown that the entryman owns such an interest therein as entitles him to receive from the irrigation works of the project a supply of water sufficient for the proper irrigation of the land embraced in his entry. Investigations by field agents as to the resources and reliability, including particularly the source and volume of the water supply, of all irrigation companies, associations, and districts through which desert-land entrymen seek to acquire water rights for the reclamation of their lands are being made as rapidly as possible, and it is the purpose of the General Land Office to accept no annual or final proofs based upon such a water right until an investigation of the company in question has been made and report thereon approved. The information so acquired will be regarded as determining, at least tentatively, the amount of stock or interest which is necessary to give the entryman a right to a sufficient supply of water; but the entryman will be permitted to challenge the correctness of the report as to the facts alleged and the validity of its conclusions and to offer, either with his final proof

or subsequently, such evidence as he can tending to support his contentions.

Entrymen applying to make final proof are required to state the source of their water supply, and if water is to be obtained from the works of an irrigation company, association, or district the local officers will indorse the name and address of the project upon the copy of the notice to be forwarded to the chief of field division. If the report on the company has been acted upon by the General Land Office and the proof submitted by claimant does not show that he owns the amount of stock or interest in the company found necessary for the area of land to be reclaimed, the local officers will suspend the proof, advise the claimant of the requirements made by the General Land Office in connection with the report, and allow him 30 days within which to comply therewith or to make an affirmative showing in duplicate and apply for a hearing. In default of any action by him within the specified time they will reject the proof, subject to the usual right of appeal. If application for hearing be filed, the local officers will transmit one copy thereof to the proper chief of field division and forward the other copy, with the final proof record, to the General Land Office.

FINAL PROOF EXPIRATION NOTICE

28. Where final proof is not made within the period of four years, or within the period for which an extension of time has been granted, the register and receiver should send the claimant a notice, addressed to him at his post-office address of record, informing him that he will be allowed 90 days in which to submit final proof; or if the death of the claimant of record be suggested, such notice should also be addressed to the claimant at the post office nearest the land. (44 L. D. 364.)

Should no action be taken within the time allowed, the register and receiver will report that fact, together with evidence of service, to the General Land Office, whereupon the entry will be canceled. The notice provided for in this paragraph must not be construed as an extension of time or as relieving the claimant from the necessity of explaining why the proof was not made within the statutory period or within such extensions of that period as have been specifically granted.

FINAL PROOF NOT REQUIRED WHILE TOWNSHIP IS SUSPENDED FOR RESURVEY, BUT MAY BE SUBMITTED AT CLAIMANT'S OPTION—PROCEDURE

No claimant will be required to submit final proof while the township embracing his entry is under suspension for the purpose of resurvey. (40 L. D. 223.) This also applies to annual proof. (See par. 18.) In computing the time when final proof on an entry so affected will become due the period between the date of suspension and the filing in the local office of the new plat of survey will be excluded. However, if the claimant so elects, he may submit final proof on such entry notwithstanding the suspension of the township. If submitted, the final proof will be received by the local officers, who will pursue the same course in regard thereto that would have

been pursued in the absence of the suspension. Should final certificate be issued on any such proof, it will describe the entered land in terms of the original survey with reference to the plat of such survey and to the fact of a pending resurvey, as follows:

In accordance with official plat of survey approved _____; resurvey now pending under Group No. _____ G. L. O.; authorization dated _____

EXTENSION OF TIME FOR SUBMITTING FINAL PROOF

29. There are five general acts of Congress which authorize the allowance, under certain conditions, of an extension of time for the submission of final proof by a desert-land claimant. Said acts are the following: June 27, 1906 (34 Stat. 519, sec. 5); March 28, 1908 (35 Stat. 52, sec. 3); April 30, 1912 (37 Stat. 106); March 4, 1915 (38 Stat. 1138-1161, sec. 5); and February 25, 1925 (43 Stat. 982). The act of June 27, 1906, is applicable only to entries embraced within the exterior limits of some withdrawal or irrigation project under the reclamation act of June 17, 1902 (32 Stat. 388). For regulations governing extensions under said act of June 27, 1906, see General Reclamation Circular. The act of March 4, 1915, is applicable only to entries made prior to March 4, 1915; and while authorizing in certain cases an additional extension to claimants who have had one or more extensions under previous laws, this act denies any extension under its terms to claimants who can obtain such benefit under prior acts. For regulations governing extensions under the act of March 4, 1915, see paragraphs 34 to 36 of this circular.

30. Under the provisions of the act of March 28, 1908, the period of four years may be extended, in the discretion of the Commissioner of the General Land Office, for an additional period not exceeding three years, if, by reason of some unavoidable delay in the construction of the irrigating works intended to convey water to the land, the entryman is unable to make proof of reclamation and cultivation required within the four years. This does not mean that the period within which proof may be made will be extended as a matter of course for three years. The statute authorizes the Commissioner of the General Land Office to grant the extension, in his discretion, for such a period as he may deem necessary for the completion of the reclamation, not exceeding three years, but applications for extension under said act will not be granted unless it be clearly shown that the failure to reclaim and cultivate the land within the regular period of four years was due to no fault on the part of the entryman but to some unavoidable delay in the construction of the irrigation works for which he was not responsible and could not have readily foreseen. (37 L. D. 332.) It must also appear that he has complied with the law as to annual expenditures and proof thereof.

Under the provisions of the act of April 30, 1912, the Secretary of the Interior may, in his discretion, in addition to the extension authorized by previous legislation, grant to any entryman under the desert land laws a further extension of time for submitting final proof, not exceeding three years, where it is shown that, because of some unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry, the claim-

ant is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands within the time limited therefor, but such further extension can not be granted for a period of more than three years nor affect contests initiated for a valid existing reason. Said act also provided:

An entryman who has complied with the law as to annual expenditures and proof thereof and who desires to make application for extension of time under the provisions of the act of March 28, 1908, should file with the register and receiver an affidavit setting forth fully the facts, showing how and why he has been prevented from making final proof of reclamation and cultivation within the regular period. This affidavit should be executed before one of the officers named in paragraph 11 of this circular and must be corroborated by two witnesses who have personal knowledge of the facts; and the register and receiver, after carefully considering all of the facts, will forward the application to the proper chief of field division, with appropriate recommendation, and advise the Commissioner of the General Land Office of such reference.

The register and receiver are required to suspend any application for extension of time if they consider the affidavit defective in form or substance, allowing the applicant a reasonable time to make such amendments therein as may be deemed necessary to remove the defects or to file exceptions to the requirements made, and advising the applicant that upon his failure to take any action within the time specified appropriate recommendations will be made. After the expiration of the time thus granted the original application and the amended affidavits or exceptions, as the case may be, together with proper report and recommendations of the register and receiver, will be transmitted to the chief of field division.

Applications for further extension of time under the act of April 30, 1912, and February 25, 1925, may be made in the same manner, and the same procedure will be followed with respect to such applications as under the act of March 28, 1908, and the act of March 4, 1915, as amended.

PROCEDURE ON APPLICATIONS FOR EXTENSION OF TIME FOR FINAL PROOF WHERE CONTEST IS PENDING

31. A pending contest against a desert-land entry will not prevent the allowance of an application for extension of time, where the contest affidavit does not charge facts tending to overcome the prima facie showing of right to such extension. (41 L. D. 603.)

Consideration by the General Land Office of an application for extension of time will not be deferred because of the pendency of a contest against the entry in question unless the contest charges be sufficient, if proven, to negative the right of the entryman to an extension of time for making final proof. If the contest charges be insufficient, the application for extension, where regular in all respects, will be allowed and the contest dismissed subject to the right of appeal, but without prejudice to the contestant's right to amend his charges. (See Circular 174, dated September 27, 1912.)

PAYMENTS—FEES

32. At the time of making final proof the claimant must pay to the receiver the sum of \$1 per acre for each acre of land upon which proof is made. This, together with the 25 cents per acre paid at the time of making the original entry, will amount to \$1.25 per acre, which is the price to be paid for all lands entered under the desert land law, except where the entry is perfected by commutation or purchase under the act of March 4, 1915. (See pars. 42 and 48 of this circular.) The receiver will issue a receipt for the money paid, and if the proof is satisfactory, the register will issue a certificate in duplicate and deliver one copy to the claimant and forward the other copy to the General Land Office with the regular returns.

If the entryman is dead and proof is made by anyone for the heirs, no will being suggested in the record, the final certificate should issue to the heirs generally, without naming them; if by anyone for the heirs or devisees, final certificate should issue in like manner to the heirs or devisees.

When final proof is made on an entry made prior to the act of March 28, 1908, for unsurveyed land, if the land is still unsurveyed and such proof is satisfactory, the register and receiver will approve same and forward it to the General Land Office without collecting the final payment of \$1 an acre and without issuing final certificate. Fees for reducing the final-proof testimony to writing should be collected and receipt issued therefor if the proof is taken before the register and receiver. As soon as the plat or plats of any township or townships previously unsurveyed are filed in the local offices the registers and receivers will, without awaiting further instructions from the General Land Office, examine their records for the purpose of determining, if possible, whether or not, prior to the passage of the act of March 28, 1908, any desert-land entry of unsurveyed land was allowed in the locality covered by the said plats; and if any such entries are found intact, they will call upon the claimants thereof to file an affidavit of adjustment, corroborated by two witnesses, giving the correct description, in accordance with the survey of the lands embraced in their respective entries. The local officers will then note these adjustments on their tract books and plats and transmit the affidavits to the General Land Office with separate reports of all conflicts which may have been developed. They will also report any case in which the claimant has failed, after due notice, to file the required affidavit of adjustment.

If final proof has been made upon any desert-land entry so adjusted and the records show that such proof has been found satisfactory by the General Land Office and no conflicts or other objections are apparent, the register and receiver will allow claimant 60 days within which to make final payment for the land, and upon receipt of the same the register will issue final certificate which will be transmitted to the General Land Office with the returns for the current month.

33. No fees or commissions are required of persons making entry under the desert land laws except such fees as are paid to the officers for taking the affidavits and proofs. Unless the entry be perfected under the act of March 4, 1915 (see pars. 42 and 47 of this circular),

the only payments made to the Government are the original payment of 25 cents an acre at the time of making the application and the final payment of \$1 an acre, to be paid at the time of making final proof. Where final proofs are made before the register or receiver in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana, they will be entitled to receive jointly 22½ cents for each 100 words of testimony reduced to writing; in all other States they will be allowed 15 cents per 100 words for such service. The United States commissioners, judges, and clerks are not entitled to receive a greater sum than 25 cents for each oath administered by them, except that they are entitled to receive \$1 for administering the oath to each entryman and each final-proof witness where final-proof testimony has been reduced to writing by them.

RELIEF UNDER ACT OF MARCH 4, 1915 (38 STAT. 1138-1161) AMENDED BY ACT OF MARCH 21, 1918 (40 STAT. 458)

34. The last three paragraphs of section 5 of the act of Congress approved March 4, 1915 (38 Stat. 1138-1161), entitled "An act making appropriations to supply deficiencies in appropriations for the fiscal year 1915 and for prior years, and for other purposes," as amended by the act of March 21, 1918 (40 Stat. 458), authorize the Secretary of the Interior, under rules and regulations to be prescribed by him, to grant relief to certain classes of desert-land claimants. This new law provides that upon certain conditions such an entryman, or his duly qualified assignee, may obtain an extension of time, not exceeding three years from date of its allowance, in which to submit final proof; or that upon certain other conditions he may either complete his entry in the manner required of a homestead claimant or purchase the land on special terms. The following rules and regulations (approved April 13, 1915, Circular 399, and here printed without substantial change) will be observed in the administration of said provisions of law.

APPLICATIONS FOR RELIEF

35. All applications for the benefits of the new law should be filed prior to the expiration of the time within which the applicant would otherwise be required to make final proof on his desert-land entry in the land office for the district in which the entered land is situated, to be referred to the proper chief of field division with appropriate recommendation, and the Commissioner of the General Land Office to be advised of such reference. They must be supported by the affidavit of the applicant, corroborated by two witnesses, as to the material facts necessary to be shown. All such affidavits must be executed before an officer authorized to administer oaths in desert-land cases. (See par. 11.)

All such applications should contain the name of the entryman and the date of the entry, and, if the entry has been assigned, the name of the assignee and date of the assignment; the description of the land involved; a statement of the various sums of money expended by the applicant or his grantors in an endeavor to reclaim the land, and the particular purpose for which each sum was expended; the facts by

reason of which it has been impossible for claimant to effect reclamation and cultivation and to submit final proof within the usual period, or such extensions thereof as may have been granted; and the facts by reason of which the applicant considers that there is or is not, as the case may be, a reasonable prospect that if an extension of time is granted him, he will be able to secure a sufficient water supply and make final proof of reclamation, irrigation, and cultivation, as required by the desert land law.

CONDITIONS FOR EXTENSION OF TIME

36. To entitle an entryman to the benefits of the first of the three paragraphs referred to, the following conditions must exist: (1) The entry must be a lawful, pending entry made prior to March 4, 1915; (2) the entryman must have complied with the requirements of the desert land law with reference to yearly expenditures and the submission of annual proofs thereof; (3) there must be a reasonable prospect that if an extension of time is granted the claimant will be able to make the final proof of reclamation, irrigation, and cultivation as required by law; (4) the case must be one in which an extension of time or a further extension can not properly be allowed under other laws; and (5) there must be established some fact or facts constituting a reasonable excuse for the applicant's failure to comply with the law within the usual time and fairly entitling him, in justice and equity, to this form of relief.

The existence of the first two of these conditions can be determined by examination of the records of the General Land Office, but in order that applicants may have the benefit of every possible circumstance entitling them to equitable consideration, they are privileged to make such further showing as they may desire as to any moneys which they may have expended in improving the land, but not used as the basis of annual proof.

The existence of the third, fourth, and fifth conditions above enumerated must be established in all cases by the affidavits filed in support of the application for relief.

With regard to the third condition, it must be shown what steps the applicant has taken to secure a water right; and either that he has secured such a right (so far as that is possible, under the State laws, in cases where beneficial application of the water to the land has not yet been made), or that there is no reason to doubt that he will be able to secure such a right before his final proof is due; that the source of water supply, if a natural stream, will, in ordinary seasons, furnish the amount of water needed by the claimant to reclaim the irrigable land in his entry after all appropriations prior to his have been satisfied; and, if water is to be taken from wells, that there is reason to believe that an adequate supply can be obtained from that source.

If water is to be obtained through an irrigation company, association, or district upon which a special agent or other officer has made a favorable report, and favorable action on such report has been taken, the existence of the third condition will be taken for granted, provided the applicant shows that he has become the owner of the required amount of stock or interest in the project, or taken

the required steps to secure the inclusion of the land in the district, or that it will be entirely possible for him to do the one or the other, as the case may be.

If an adverse report has been made on the irrigation project in question, or if adverse action thereon has been taken, the applicant may present such showing of facts as may tend to refute the findings made and the conclusions reached, whereupon, if the allegations seem to warrant such action, a hearing will be ordered to determine the merits of the case.

The fourth condition above enumerated will be satisfied if the case does not come within the terms of any of the other acts of Congress providing for the allowance of extensions of time for submitting final proof on desert-land entries.

As explained in paragraph 29, the extension of time authorized by the act of March 4, 1915, is applicable only to entries made prior to the date of the act. Where the irrigation works intended to convey water to the land have been completed, or for any other reason, the claimant's inability to submit final proof can not be attributed to unavoidable delay in the construction of such irrigation works; where the cause of delay in submitting the final proof is the claimant's temporary inability to acquire water right; or where, on account of drought of greater or less duration, but not likely, in all probability, to be a permanent condition, the operation of a completed system of irrigation works has been hindered or delayed, an application for an extension of time under the first paragraph of the act of March 4, 1915, as amended by the act of March 21, 1918, above cited, can be entertained, except where the entered lands have been included within the exterior limits of a withdrawal or irrigation project under the act of June 17, 1902 (32 Stat. 388), and the submission of satisfactory final proof is being hindered or delayed thereby, so that the case comes within the provisions of the fifth section of the act of June 27, 1906.

No application for extension of time can be allowed, however, if it appears that the claimant's inability to submit final proof as required by the desert land law is due to his own neglect or default; nor will any such application be granted where it appears that there is no reasonable prospect that the applicant will be able to provide a supply of water sufficient to irrigate and permanently reclaim all the irrigable land embraced in his entry, because, in such a case, no extension of time can enable the entryman to comply with the requirements of the desert land law.

OTHER FORMS OF RELIEF

37. The second and third paragraphs of the new law are designed to afford relief in cases of the kind last above mentioned by authorizing the Secretary of the Interior, in his discretion, to permit the applicant to perfect his entry in the manner required of a homestead entryman, or to purchase the land on the terms specified, as the applicant may elect. The entry itself is not transmuted, however, but remains a desert-land entry, subject to a new kind of proof.

CONDITIONS AUTHORIZING HOMESTEAD PROOF AND PURCHASE

38. To entitle a claimant to relief under either of these paragraphs, it must be made to appear to the satisfaction of the Secretary of the Interior (1) that the entry in question is a lawful pending entry, made prior to March 4, 1915; (2) where application for relief is made on behalf of an assignee, that the entry was assigned to him prior to March 21, 1918; (3) that the applicant, or his assignors, have, in good faith, expended the sum of \$3 per acre in the attempt to effect reclamation of the entered land; and (4) that there is no reasonable prospect that if the extension of time authorized under the provisions of this act, or any other existing law, were granted the applicant would be able to secure water sufficient to effect reclamation of the land in his entry or any subdivision thereof. The first two of these conditions can be determined from the records of the General Land Office.

With regard to the third condition, any expenditure which the claimant can show that he has made in good faith, and with a reasonable belief that it would tend to effect reclamation of the land will be acceptable even though such expenditure may not have been such as would satisfy the requirements for annual proof.

With regard to the fourth condition, the applicant should show what steps he has taken for the purpose of acquiring a water right and with what result, what has been done by himself or others toward the development of a water supply and the construction of an irrigation system to bring the water to the land, the reasons for his failure to secure an adequate water supply, and his grounds for believing that there is no reasonable prospect of final success in acquiring such a supply. In this connection consideration will be given to any special agent's reports on file regarding any irrigation company or irrigation district from which applicant has been endeavoring to secure water and if it appears therefrom that there is no reasonable prospect that the applicant can secure a sufficient water supply, the existence of that condition will be taken for granted.

NOTICE OF ALLOWANCE OF RELIEF—ELECTION TO PURCHASE

39. When any application for relief under the second paragraph shall have been allowed by the Commissioner of the General Land Office, notice thereof will be served through the proper local land office upon the claimant, advising him that he will be allowed five years from date of service of such notice within which to perfect his entry in the manner required of a homestead entryman, unless he shall, within 60 days from receipt of such notice, file in the local land office an election to perfect the entry within five years by purchase under the third paragraph, and pay to the receiver, at time of election, the sum of 50 cents for each acre embraced in the entry. Such election, if filed, must be in writing, signed by the claimant, and his signature thereto must be witnessed by two persons, whose post-office addresses shall be given. The election will be forwarded to the General Land Office with the regular monthly returns and must bear the serial number of the entry to which it relates, and also the number of the receipt issued for the money paid in connection therewith.

40. In the submission and consideration of final proofs under the second and third paragraphs, the usual course of procedure with regard to desert-land final proofs will be followed, so far as applicable. The notice of intention to submit proof, however, should indicate whether the entry is to be perfected as in homestead cases or by purchase.

41. After a desert-land entry has been authorized to be perfected either in the manner of a homestead entry or by purchase, no assignment thereof will be allowed, for the reason that the benefits of the second and third paragraphs of the act as amended by the act of March 21, 1918, are not available to assignees under assignments made subsequently to the date of the act as amended; and in the final adjudication of entries being perfected under the provisions of said paragraphs, the same rules will be observed, as to proof of nonalienation, as in homestead cases.

ENTRIES PERFECTED BY COMPLIANCE WITH HOMESTEAD LAW

42. A claimant who has received permission to perfect his entry in the manner required of homestead entrymen may make proof at any time when he can show that residence and cultivation have been maintained in good faith for the required length of time and to the required extent.

However, inasmuch as the homestead laws do not authorize the commutation of homesteads made under the enlarged homestead acts, commutation proof will not be accepted upon any desert-land entry involving more than 160 acres. In addition to the original payment of 25 cents per acre at time of entry, a claimant who makes commutations proof must pay for the land at the regular "minimum price" of \$1.25 per acre.

Failure to submit final proof within the five-year period allowed by the law will be ground for the cancellation of the entry, unless good reason for the delay can be shown, in which event final certificate may be issued and the case referred to the board of equitable adjudication for confirmation.

Those provisions of the homestead law which define the personal qualifications required of entrymen do not apply to cases of this kind, but the final proof must show that the claimant possesses the same qualifications as to citizenship and the amount of land entered by him or assigned or patented to him, under the agricultural public-land laws, as in the case of those who make ordinary final proof on desert-land entries.

43. If not already residing on his desert-land entry, the claimant must establish residence thereon within six months from the date of receiving the notice advising him that he will be permitted to perfect his entry under the second paragraph, unless such period be extended as permitted by the homestead law.

Residence upon the land must be continuously maintained for a period of three years from and after the date of its establishment. During each year the claimant may be absent for two periods only, the aggregate thereof not to exceed five months. Actual residence must be maintained for the remaining seven months of each year. If commutation proof is submitted, substantially continuous residence upon the land for a period of 14 months must be shown, to-

gether with the cultivation of not less than one-sixteenth of the area of the entry, unless a reduction of the area required to be cultivated be allowed. The requirements made by this circular as to the period of residence and amount of cultivation are those of the act of June 6, 1912 (37 Stat. 123), or the "three-year homestead law."

If a claimant establishes residence upon his entry prior to the allowance of his application for relief, and continues to maintain it in good faith as required by the homestead law, full credit will be allowed for the period during which such residence is so maintained.

Leaves of absence and credit for military service will be allowed upon the same terms and conditions as in case of a homestead entry.

The claimant must have a habitable house upon the land at the time of submitting final proof. Other improvements should be of such character and amount as are sufficient to show good faith.

44. Cultivation of the land for at least two years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed), where that manner of cultivation is necessary or generally followed in the locality. During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are applicable to all cases, without regard to the area or location of the entry. The period of cultivation, like that of residence, may begin before the allowance of the application for relief; credit for all cultivation, if in accordance with the provisions of the three-year homestead law, will be allowed, without regard to the time when it was performed.

45. If the entry is situated in the States of Utah or Idaho, and the lands involved have been, or shall be, designated as being of the character subject to entry under the sixth sections of the acts of February 19, 1909 (35 Stat. 639), as amended, or June 17, 1910 (36 Stat. 531), respectively, the entryman may avail himself of the privileges of these sections, upon a proper showing of the character of the land, as required of a homestead applicant thereunder, in which event residence need not be maintained upon the land, but the amount of cultivation required is double that in ordinary cases and must be shown during a period of four years. For further details, reference should be made to the circular of this office known as "Suggestions to homesteaders," copies of which may be obtained of this office or any local land office.

46. If an entryman dies before being authorized to exercise the rights conferred by the second and third paragraphs, or after such authorization but before he has perfected his entry, his rights will pass to those persons who would inherit his lands according to the laws of the State wherein the entry is located or, if he leaves a will, to those to whom he devises such rights. Applications for the benefits of the new law may be filed, and proofs thereunder may be submitted either by one of the heirs in behalf of all, by a guardian of the heirs' estate if they themselves are minors, or by the entryman's

executor or administrator, acting under the supervision of the proper probate court.

The heirs or devisees will not be required to settle or reside upon the land, but must show that the land has been cultivated and improved by them or on their behalf, as required by the homestead law, for such period as will, when added to the entryman's period of compliance with the law, aggregate the required term of three years. If they desire to commute the entry, they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived.

With regard to the reduction of the required area of cultivation, the same rules and procedure will be followed as in homestead cases.

47. The same fees, and no others, may be charged by registers and receivers upon submission of final proofs under the new law as upon submission of ordinary desert-land proofs. (See par. 33.) No commissions may be charged under any circumstances and no testimony fees unless the proof is taken at the land office.

ENTRIES PERFECTED BY PURCHASE

48. If claimant elects to perfect his entry under the third paragraph he must, within five years from the date of his election and payment of the sum of 50 cents per acre, make final proof and pay to the receiver the further sum of 75 cents for each acre of land embraced in his entry. The final proof, in order to be acceptable, must show that, at the date of the proof, the claimant has upon the tract permanent improvements conducive to the agricultural development thereof, of the value of at least \$1.25 per acre, and that he has in good faith used the land for agricultural purposes for at least three years. Under this third paragraph grazing will be regarded as an agricultural use, provided it be established that the land is best suited to that purpose and has been so used in good faith. Actual residence on the land need not be shown.

49. Improvements made during the first three years of the life of the entry and used as the basis of annual proof, if permanent in character and conducive to the agricultural development of the land, may be counted as improvements required to be shown under this section, provided their character and continued existence are satisfactorily established by the final proof; but no water rights or irrigation ditches will be recognized for this purpose unless it is clearly shown that they have been made actually conducive to the agricultural development of the land, or a portion thereof, and that that fact is not inconsistent with the truth of the claimant's preliminary showing that there was no reasonable prospect that he could acquire a sufficient water supply to irrigate the irrigable land of his entry.

50. If a claimant fails to make final proof and payment, as required by the third paragraph, within the five-year period, all sums theretofore paid by him will be forfeited and the entry canceled.

FORM OF PROOFS

51. Final proofs under the second paragraph may be made on the forms used in homestead cases. For final proofs to be made under the third paragraph special forms have been provided.

CONTESTS AND RELINQUISHMENTS

52. Contests may be initiated by any person seeking to acquire title to or claiming an interest in the land involved against a party to any desert-land entry because of priority of claim or for any sufficient cause affecting the legality or validity of the claim not shown by the records of the Land Department.

Successful contestants will be allowed a preference right of entry for 30 days after notice of the cancellation of the contested entry, in the same manner as in homestead cases, and the register will give the same notice and is entitled to the same fee for notice as in other cases.

53. A desert-land entry may be relinquished at any time by the party owning the same, and when relinquishments are filed in the local land office the entries will be canceled by the register and receiver in the same manner as in homestead, preemption, and other cases under the first section of the act of May 14, 1880 (21 Stat. 140). Conditional relinquishments will not be accepted.

54. All previous rulings and instructions not in harmony herewith are hereby vacated.

WILLIAM SPRY,
Commissioner.

Approved: May 20, 1924.

E. C. FINNEY,
First Assistant Secretary.

STATUTES

An Act to Provide for the Sale of Desert Lands in Certain States and Territories

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for any citizen of the United States, or any person of requisite age "who may be entitled to become a citizen, and who has filed his declaration to become such" and upon payment of twenty-five cents per acre, to file a declaration under oath with the register and the receiver of the land district in which any desert land is situated that he intends to reclaim a tract of desert land not exceeding one section,¹ by conducting water upon the same, within the period of three years² thereafter: *Provided, however,* That the right to the use of water by the person so conducting the same on or to any tract of desert land of six hundred and forty acres shall depend upon bona fide prior appropriation; and such right shall not exceed the amount of water actually appropriated and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manu-

¹ Limited to 320 acres by act of March 3, 1891 (26 Stat. 1095).

² Time extended to four years by act of March 3, 1891, *supra*.

facturing purposes subject to existing rights. Said declaration shall describe particularly said section of land if surveyed, and, if unsurveyed,³ shall describe the same as nearly as possible without a survey. At any time within the period of three years after filing said declaration, upon making satisfactory proof to the register and receiver of the reclamation of said tract of land in the manner aforesaid, and upon the payment to the receiver of the additional sum of one dollar per acre for a tract of land not exceeding six hundred and forty acres to any one person, a patent for the same shall be issued to him: *Provided*, That no person shall be permitted to enter more than one tract of land and not to exceed six hundred and forty acres, which shall be in compact form.

SEC. 2. That all lands, exclusive of timberlands and mineral lands, which will not, without irrigation, produce some agricultural crop shall be deemed desert lands within the meaning of this act, which fact shall be ascertained by proof of two or more credible witnesses under oath, whose affidavits shall be filed in the land office in which said tract of land may be situated.

SEC. 3. That this act shall only apply to and take effect in the States of California, Oregon, and Nevada, and the Territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and Dakota, and the determination of what may be considered desert land shall be subject to the decision and regulation of the Commissioner of the General Land Office.

Approved, March 3, 1877. (19 Stat. 377.)

Three Hundred and Twenty Acre Limitation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

No person who shall, after the passage of this act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry, or settlement is validated by this act: *Provided*, That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act, west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

Approved, August 30, 1890. (26 Stat. 391.)

An Act to Repeal Timber Culture Laws, and for Other Purposes

* * * * *

SEC. 2. That an act to provide for the sale of desert lands in certain States and Territories, approved March third, eighteen hundred

³ Right of entry restricted to surveyed land by act of March 28, 1908 (35 Stat. 52).

and seventy-seven, is hereby amended by adding thereto the following sections:

"SEC. 4. That at the time of filing the declaration hereinbefore required the party shall also file a map of said land which shall exhibit a plan showing the mode of contemplated irrigation, and which plan shall be sufficient to thoroughly irrigate and reclaim said land, and prepare it to raise ordinary agricultural crops, and shall also show the source of the water to be used for irrigation and reclamation. Persons entering or proposing to enter separate sections or fractional parts of sections of desert lands may associate together in the construction of canals and ditches for irrigating and reclaiming all of said tracts, and may file a joint map or maps showing their plan of internal improvements.

"SEC. 5. That no land shall be patented to any person under this act unless he or his assignors shall have expended in the necessary irrigation, reclamation, and cultivation thereof, by means of main canals and branch ditches, and in permanent improvements upon the land, and in the purchase of water rights for the irrigation of the same, at least three dollars per acre of whole tract reclaimed and patented in the manner following: Within one year after making entry for such tract of desert land as aforesaid, the party so entering shall expend not less than one dollar per acre for the purposes aforesaid; and he shall in like manner expend the sum of one dollar per acre during the second and also during the third year thereafter, until the full sum of three dollars per acre is so expended. Said party shall file during each year with the register proof, by the affidavits of two or more credible witnesses, that the full sum of one dollar per acre has been expended in such necessary improvements during such year, and the manner in which expended, and at the expiration of the third year a map or plan showing the character and extent of such improvements. If any party who has made such application shall fail during any year to file the testimony aforesaid, the lands shall revert to the United States, and the twenty-five cents advanced payment shall be forfeited to the United States, and the entry shall be canceled. Nothing herein contained shall prevent a claimant from making his final entry and receiving his patent at an earlier date than hereinbefore prescribed, provided that he then makes the required proof of reclamation to the aggregate extent of three dollars per acre: *Provided*, That proof be further required of the cultivation of one-eighth of the land.

"SEC. 6. That this act shall not affect any valid rights heretofore accrued under said act of March third, eighteen hundred and seventy-seven, but all bona fide claims heretofore lawfully initiated may be perfected, upon due compliance with the provisions of said act, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests as if this act had not been passed; or said claims, at the option of the claimant may be perfected and patented under the provisions of said act, as amended by this act, so far as applicable; and all acts and parts of acts in conflict with this act are hereby repealed.

"SEC. 7. That at any time after filing the declaration, and within the period of four years thereafter, upon making satisfactory proof to the register and the receiver of the reclamation and cultivation of

said land to the extent and cost and in the manner aforesaid, and substantially in accordance with the plans herein provided for, and that he or she is a citizen of the United States, and upon payment to the receiver of the additional sum of one dollar per acre for said land, a patent shall issue therefor to the applicant or his assigns; but no person or association of persons shall hold, by assignment or otherwise prior to the issue of patent, more than three hundred and twenty acres of such arid or desert lands; but this section shall not apply to entries made or initiated prior to the approval of this act: *Provided however*, That additional proofs may be required at any time within the period prescribed by law, and that the claims or entries made under this or any preceding act shall be subject to contest as provided by the law relating to homestead cases, for illegal inception, abandonment, or failure to comply with the requirements of law, and upon satisfactory proof thereof shall be canceled and the lands and moneys paid therefor shall be forfeited to the United States.

"SEC. 8. That the provisions of the act to which this is an amendment, and the amendments thereto, shall apply to and be in force in the State of Colorado, as well as the States named in the original act; and no person shall be entitled to make entry of desert land except he be a resident citizen of the State or Territory in which the land sought to be entered is located."¹

Approved, March 3, 1891. (26 Stat. 1095.)

Section 2294, United States Revised Statutes, as Amended by the Act of March 11, 1902 (32 Stat. 63), the Act of March 4, 1904 (33 Stat. 59), and the Act of February 23, 1923 (42 Stat. 1282)

SEC. 2294. That hereafter all proofs, affidavits, and oaths of any kind whatsoever required to be made by applicants and entrymen under the homestead, preemption, timber culture, desert land, and timber and stone acts, may in addition to those now authorized to take such affidavits, proofs, and oaths be made before any United States commissioner or commissioner of the court exercising Federal jurisdiction in the Territory or before the judge or clerk of any court of record in the county, parish, or land district in which the lands are situated: *Provided*, That in cases where because of geographic or topographic conditions there is a qualified officer nearer or more accessible to the land involved, but outside the county and land district, affidavits, proofs, and oaths may be taken before such officer: *Provided further*, That in case the affidavits, proofs, and oaths hereinbefore mentioned be taken outside of the county or land district in which the land is located the applicant must show by affidavit satisfactory to the Commissioner of the General Land Office that it was taken before the nearest or most accessible officer qualified to take such affidavits, proofs, and oaths; but such showing by affidavit need not be made in making final proof if the proof be taken in the town or city where the newspaper is published in which the final proof notice is printed. The proof, affidavit, and oath, when so made and duly subscribed, or which may have heretofore been so made and duly subscribed, shall have the same force and effect as if made before the register and receiver when transmitted to them with the

¹ Excepting in the State of Nevada. Act of January 6, 1921 (41 Stat. 1086).

fees and commissions allowed and required by law. That if any witness making such proof, or any applicant making such affidavit or oath, shall knowingly, willfully, or corruptly swear falsely to any material matter contained in said proofs, affidavits, or oaths he shall be deemed guilty of perjury and shall be liable to the same pains and penalties as if he had sworn falsely before the register. That the fees for entries and for final proofs, when made before any other officer than the register and receiver, shall be as follows:

For each affidavit, 25 cents.

For each deposition of claimant or witness, when not prepared by the officer, 25 cents.

For each deposition of claimant or witness prepared by the officer, \$1.

Any officer demanding or receiving a greater sum for such service shall be guilty of misdemeanor and upon conviction shall be punished for each offense by a fine not exceeding \$100.

An Act Limiting and Restricting the Right of Entry and Assignment Under the Desert Land Law and Authorizing an Extension of Time Within Which to Make Final Proof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act the right to make entry of desert lands under the provisions of the act approved March third, eighteen hundred and seventy-seven, entitled "An act to provide for the sale of desert lands in certain States and Territories," as amended by the act approved March third, eighteen hundred and ninety-one, entitled "An act to repeal timber culture laws, and for other purposes," shall be restricted to surveyed public lands of the character contemplated by said acts, and no such entries of unsurveyed lands shall be allowed or made of record: *Provided, however,* That any individual qualified to make entry of desert lands under said acts who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area three hundred and twenty acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said acts, in conformity with the public-land surveys, within ninety days after the filing of the approved plat of survey in the district land office.

SEC. 2. That from and after the date of the passage of this act no assignment of an entry made under said acts shall be allowed or recognized, except it be to an individual who is shown to be qualified to make entry under said acts of the land covered by the assigned entry, and such assignments may include all or part of an entry; but no assignment to or for the benefit of any corporation or association shall be authorized or recognized.

SEC. 3. That any entryman under the above acts who shall show to the satisfaction of the Commissioner of the General Land Office that he has in good faith complied with the terms, requirements, and provisions of said acts, but that because of some unavoidable delay in the construction of the irrigating works intended to convey water to the said lands he is without fault on his part unable to make

proof of the reclamation and cultivation of said land as required by said acts, shall upon filing his corroborated affidavit with the land office in which said land is located, setting forth said facts, be allowed an additional period of not to exceed three years, within the discretion of the Commissioner of the General Land Office, within which to furnish proof, as required by said acts, of the completion of said work.

Approved, March 28, 1908. (35 Stat. 52.)

An Act for the Protection of the Surface Rights of Entrymen

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who has in good faith located, selected, or entered under the non-mineral land laws of the United States any lands which subsequently are classified, claimed, or reported as being valuable for coal may, if he shall so elect, and upon making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which shall contain a reservation to the United States of all coal in said lands and the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal land laws in force at the time of such disposal, but no person shall enter upon said lands to prospect for or mine and remove coal therefrom without previous consent of the owner under such patent except upon such conditions as to security for and payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction: *Provided*, That the owner under such patent shall have the right to mine coal for use on the land for domestic purposes prior to the disposal by the United States of the coal deposit: *Provided further*, That nothing herein contained shall be held to affect or abridge the right of any locator, selector, or entryman to a hearing for the purpose of determining the character of the land located, selected, or entered by him. Such locator, selector, or entryman who has heretofore made or shall hereafter make final proof showing good faith and satisfactory compliance with the law under which his land is claimed shall be entitled to a patent without reservation unless at the time of such final proof and entry it shall be shown that the land is chiefly valuable for coal.

Approved, March 3, 1909. (35 Stat. 844.)

An Act to Provide for Agricultural Entries on Coal Lands

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws by actual settlers only, the desert land law, to selection under section four of the act approved August eighteenth, eighteen hundred and ninety-four, known as the

Carey Act, and to withdrawal under the act approved June Seventeenth, nineteen hundred and two, known as the reclamation act, whenever such entry, selection, or withdrawal shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same. But no desert entry made under the provisions of this act shall contain more than one hundred and sixty acres, and all homestead entries made hereunder shall be subject to the conditions, as to residence and cultivation, of entries under the act approved February nineteenth, nineteen hundred and nine, entitled "An act to provide for an enlarged homestead": *Provided*, That those who have initiated nonmineral entries, selections, or locations in good faith, prior to the passage of this act, on lands withdrawn or classified as coal lands may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this act.

SEC. 2. That any person desiring to make entry under the homestead laws or the desert land law, any State desiring to make selection under section four of the act of August eighteenth, eighteen hundred and ninety-four, known as the Carey Act, and the Secretary of the Interior in withdrawing under the reclamation act lands classified as coal lands, or valuable for coal, with a view of securing or passing title to the same in accordance with the provisions of said acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions and reservation of this act.

SEC. 3. That upon satisfactory proof of full compliance with the provisions of the laws under which entry is made, and of this act, the entryman shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the coal in the lands so patented, together with the right to prospect for, mine, and remove the same. The coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal land laws in force at the time of such disposal. Any person qualified to acquire coal deposits or the right to mine and remove coal under the laws of the United States shall have the right, at all times, to enter upon the lands selected, entered, or patented, as provided by this act, for the purpose of prospecting for coal thereon upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: *Provided*, That the owner under such limited patent shall have the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits: *Provided*

further, That nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, enter, or select, under the land laws of the United States, lands which have been classified as coal lands with a view of disproving such classification and securing a patent without reservation.

Approved, June 22, 1910. (36 Stat. 583.)

An Act Authorizing the Secretary of the Interior to Grant Further Extension of Time Within Which to Make Proof on Desert-Land Entries

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior may, in his discretion, in addition to the extension authorized by existing law, grant to any entryman under the desert land laws a further extension of the time within which he is required to make final proof: *Provided*, That such entryman shall, by his corroborated affidavit filed in the land office of the district where such land is located, show to the satisfaction of the Secretary that because of unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry he is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands as required by law within the time limited therefor; but such extension shall not be granted for a period of more than three years, and this act shall not affect contests initiated for a valid existing reason: *Provided*, That the total extension of the statutory period for making final proof that may be allowed in any one case under this act, and any other existing statutes of either general or local application, shall be limited to six years in the aggregate.

Approved, April 30, 1912. (37 Stat. 106.)

An Act to Provide for Agricultural Entry of Lands Withdrawn, Classified, or Reported as Containing Phosphate, Nitrate, Potash, Oil, Gas, or Asphaltic Minerals

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits, shall be subject to appropriation, location, selection, entry, or purchase, if otherwise available, under the nonmineral land laws of the United States, whenever such location, selection, entry, or purchase shall be made with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same; but no desert entry made under the provisions of this act shall contain more than one hundred and sixty acres: *Provided*, That all applications to locate, select, enter, or purchase under this section shall state that

the same are made in accordance with and subject to the provisions and reservations of this act.

SEC. 2. That upon satisfactory proof of full compliance with the provisions of the laws under which the location, selection, entry, or purchase is made, the locator, selector, entryman, or purchaser shall be entitled to a patent to the land located, selected, entered, or purchased, which patent shall contain a reservation to the United States of the deposits on account of which the lands so patented were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same, such deposits to be subject to disposal by the United States only as shall be hereafter expressly directed by law. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may re-enter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the minerals therefrom and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages: *Provided*, That nothing herein contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, select, enter, or purchase, under the land laws of the United States, lands which have been withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic mineral lands, with a view of disproving such classification and securing patent without reservation, nor shall persons who have located, selected, entered, or purchased lands subsequently withdrawn, or classified as valuable for said mineral deposits, be debarred from the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands entered, selected, or located are in fact nonmineral in character.

SEC. 3. That any person who has, in good faith, located, selected, entered, or purchased, or any person who shall hereafter locate, select, enter, or purchase, under the nonmineral land laws of the United States, any lands which are subsequently withdrawn, classified, or reported as being valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, may, upon application therefor, and making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which patent shall contain a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, together with the right to prospect for, mine, and remove the same.

Approved, July 17, 1914. (38 Stat. 509.)

An Act Providing for Second Homestead and Desert-Land Entries

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person otherwise duly qualified to make entry or entries of public lands under the homestead or desert land laws, who has heretofore made or may hereafter make entry under said laws, and who, through no fault of his own, may have lost, forfeited, or abandoned the same, or who may hereafter lose, forfeit, or abandon same, shall be entitled to the benefits of the homestead or desert land laws as though such former entry or entries had never been made: *Provided,* That such applicant shall show to the satisfaction of the Secretary of the Interior that the prior entry or entries were made in good faith, were lost, forfeited, or abandoned because of matters beyond his control, and that he has not speculated in his right nor committed a fraud or attempted fraud in connection with such prior entry or entries.

Approved, September 5, 1914. (38 Stat. 712.)

An Act Making Appropriations to Supply Deficiencies in Appropriations for the Fiscal Year Nineteen Hundred and Fifteen and for Prior Years, and for Other Purposes

* * * * *

That the Secretary of the Interior may, in his discretion, extend the time within which final proof is required to be submitted upon any lawful pending desert-land entry made prior to July first, nineteen hundred and fourteen, such extension not to exceed three years from the date of allowance thereof: *Provided,* That the entryman or his duly qualified assignee has, in good faith, complied with the requirements of law as to yearly expenditures and proof thereof, and shall show, under rules and regulations to be prescribed by the Secretary of the Interior, that there is a reasonable prospect that, if the extension is granted, he will be able to make the final proof of reclamation, irrigation, and cultivation required by law: *Provided further,* That the foregoing shall apply only to cases wherein an extension or further extension of time may not properly be allowed under existing law.

That where it shall be made to appear to the satisfaction of the Secretary of the Interior, under rules and regulations to be prescribed by him, with reference to any lawful pending desert-land entry made prior to July first, nineteen hundred and fourteen, under which the entryman or his duly qualified assignee under an assignment made, prior to the date of this act has, in good faith, expended the sum of \$3 per acre in the attempt to effect reclamation of the land, that there is no reasonable prospect that, if the extension allowed by this act or any existing law were granted, he would be able to secure water sufficient to effect reclamation of the irrigable land in his entry or any legal subdivision thereof, the Secretary of the Interior may, in his discretion, allow such entryman or assignee five years from notice within which to perfect the entry in the manner required of a homestead entryman.

That any desert-land entryman or his assignee entitled to the benefit of the last preceding paragraph may, if he shall so elect within

sixty days from the notice therein provided, pay to the receiver of the local land office the sum of 50 cents per acre for each acre embraced in the entry, and thereafter perfect such entry upon proof that he has upon the tract permanent improvements conducive to the agricultural development thereof of the value of not less than \$1.25 per acre, and that he has in good faith used the land for agricultural purposes for three years, and the payment to the receiver at the time of final proof of the sum of 75 cents per acre: *Provided*, That in such case final proof may be submitted at any time within five years from the date of the entryman's election to proceed as provided in this section, and in the event of failure to perfect the entry as herein provided all moneys theretofore paid shall be forfeited and the entry canceled.

Approved, March 4, 1915. (38 Stat. 1138-1161.)

An Act Relating to Desert-Land Entries

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right to make a desert-land entry shall not be denied to any applicant therefor who has already made an enlarged homestead entry of three hundred and twenty acres: *Provided*, That said applicant is a duly qualified entryman and the whole area to be acquired as an enlarged homestead entry and under the provisions of this act does not exceed four hundred and eighty acres.

Approved, February 27, 1917. (39 Stat. 946.)

An Act to Amend an Act Entitled "An Act Making Appropriations to Supply Deficiencies in Appropriations for the Fiscal Year Nineteen Hundred and Fifteen and for Prior Years, and for Other Purposes"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the last three paragraphs of section five of the act of March fourth, nineteen hundred and fifteen, "An act making appropriations to supply deficiencies in appropriations for the fiscal year nineteen hundred and fifteen and for prior years, and for other purposes," be, and the same are hereby, extended and made applicable to any lawful pending desert-land entry made prior to March fourth, nineteen hundred and fifteen: *Provided*, That in cases where such entries have been assigned prior to the date of the act the assignees shall, if otherwise qualified, be entitled to the benefit hereof.

Approved, March 21, 1918. (40 Stat. 458.)

An Act to Promote the Mining of Coal, Phosphate, Oil, Oil Shale, Gas, and Sodium on the Public Domain

* * * * *

SEC. 29. That any permit, lease, occupation, or use permitted under this act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint

or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes: *Provided*, That said Secretary, in his discretion, in making any lease under this act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided further*, That if such reservation is made it shall be so determined before the offering of such lease: *And provided further*, That the said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved.

* * * * *

Approved February 25, 1920. (41 Stat. 537.)

An Act to Amend Section 8 of An Act to Provide for the Sale of Desert Lands in Certain States and Territories, Approved March 3, 1877, as Amended by An Act to Repeal Timber Culture Laws, and for Other Purposes, Approved March 3, 1891

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8 of an act to provide for the sale of desert lands in certain States and Territories approved March 3, 1877, as amended by an act to repeal timber culture laws, and for other purposes, approved March 3, 1891, be, and the same is hereby, amended so as to read as follows:

"SEC. 8. That the provisions of the act to which this is an amendment, and the amendments thereto, shall apply to and be in force in the State of Colorado, as well as the States named in the original act; and, excepting in the State of Nevada, no person shall be entitled to make entry of desert lands unless he be a resident citizen of the State or Territory in which the land sought to be entered is located."

Approved January 6, 1921. (41 Stat. 1086.)

An Act to Authorize Certain Desert-Land Claimants Who Entered the Military or Naval Service of the United States During the War with Germany to Make Final Proof of Their Entries

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of March 1, 1921 (Forty-first Statutes, page 1202), entitled "An act to authorize certain homestead settlers or entrymen who entered the military or naval service of the United States during the war with Germany to make final proof of their entries," be, and the same is hereby, amended by adding thereto at the end thereof the following matter, which shall be known and designated as section 2 of said act:

"SEC. 2. That any entryman under the desert land laws, or any person entitled to preference right of entry under section 1 of the

act approved March 28, 1908 (Thirty-fifth Statutes at Large, page 52), who after application or entry for surveyed lands or legal initiation of claim for unsurveyed lands, and prior to November 11, 1918, enlisted or was actually engaged in the United States Army, Navy, or Marine Corps during the war with Germany, who has been honorably discharged, and because of physical incapacities due to service is unable to accomplish reclamation of and payment for the land, may make proof without further reclamation thereof or payments thereon under such rules and regulations as may be prescribed by the Secretary of the Interior, and receive patent for the land by him so entered or claimed, if found entitled thereto: *Provided*, That no such patent shall issue prior to the survey of the land."

Approved December 15, 1921. (42 Stat. 348.)

An Act Granting Desert-Land Entrymen an Extension of Time for Making Final Proof

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior may, in his discretion, in addition to the extensions authorized by existing law, grant to any entryman under the desert-land laws of the United States a further extension of time of not to exceed three years within which to make final proof: *Provided*, That such entryman shall, by his corroborated affidavit, filed in the land office of the district where such land is located, show to the satisfaction of the Secretary that because of unavoidable delay in the construction of the irrigation works intended to convey water to the land embraced in his entry, he is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands as required by law within the time limited therefor: *And provided further*, That the entryman, his heirs, or his duly qualified assignee, has in good faith complied with the requirements of law as to yearly expenditures and proof thereof, and shall show, under rules and regulations to be prescribed by the Secretary of the Interior, that there is a reasonable prospect that if the extension is granted he will be able to make the final proof of reclamation, irrigation, and cultivation required by law.

Approved February 25, 1925. (43 Stat. 982.)

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Part 167

still in
effect
5/27/54 MB

CIRCULAR No. 486.

ENLARGED HOMESTEAD ACT—ADDITIONAL ENTRIES FOR INCON-
TIGUOUS LANDS. ACT OF JULY 3, 1916 (PUBLIC, NO. 142).

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 8, 1916.

REGISTERS AND RECEIVERS,

*United States Land Offices, Arizona, California, Colorado,
Kansas, Montana, Nevada, New Mexico, North Dakota,
Oregon, South Dakota, Utah, Washington, and Wyoming.*

SIRS: The act of July 3, 1916 (Public, No. 142), added a seventh section to the enlarged homestead act, to permit an additional entry for land not contiguous to the tract originally entered—after submission of proof on the original entry. It reads as follows:

"That the act entitled 'An act to provide for an enlarged homestead,' approved February 19, 1909, be amended by adding thereto an additional section to be known as section 7:

"SEC. 7. That any person who has made or shall make homestead entry of less than three hundred and twenty acres of lands of the character herein described, and who shall have submitted final proof thereon, shall have the right to enter public lands subject to the provisions of this act, not contiguous to his first entry, which shall not with the original entry exceed three hundred and twenty acres: *Provided*, That the land originally entered and that covered by the additional entry shall first have been designated as subject to this act, as provided by section one thereof: *Provided further*, That in no case shall patent issue for the land covered by such additional entry until the person making same shall have actually and in conformity with the homestead laws resided upon and cultivated the lands so additionally entered, and otherwise complied with such laws, except that where the land embraced in the additional entry is located not exceeding twenty miles from the land embraced in the original entry no residence shall be required on such additional entry if the entryman is residing on his former entry: *And provided further*, That this section shall not be construed as affecting any rights as to location of soldiers' additional homesteads under section twenty-three hundred and six of the Revised Statutes."

2. This act has no application unless the first entry was made in one of the States where the enlarged homestead act is in force, as listed above, and the additional entry can not be allowed until both tracts shall have been designated thereunder. However, in considering allowance of the entry it is not material whether the applicant owns or occupies the original tract. A person whose two incon-
tiguous entries do not make up 320 acres, who has submitted proof on the first and occupies his unperfected second claim, may amend the latter by adding land contiguous thereto, so as to aggregate that

area, subject to the requirements of this act respecting residence and cultivation. Also the benefits of this act may be claimed by a person who has made and perfected more than one homestead entry, but the aggregate area of the land thus acquired with that applied for is limited to 320 acres.

3. The only qualifications required of an applicant under this act are that he has not already made an additional entry thereunder, and that the tract applied for will not, with other lands which he has entered and acquired title to under any of the nonmineral public-land laws, or which he is then claiming thereunder, make an aggregate of more than 480 acres.

4. It is not necessary that any of the land be designated under the enlarged homestead act when the application for additional entry is filed. The applicant must state that both tracts have been so designated, or he must file petition for designation of the undesignated land, as provided by the act of March 4, 1915 (38 Stat., 1162), and separate petitions must be filed for the different tracts if both be undesignated. These will be forwarded by the local officers, as directed by the regulations under said act.

Where an original tract, outside of the land district, is said to have been designated you will at once make inquiry of the proper office. If the response be satisfactory, action will be taken accordingly; but, if part or all of the original tract appears not to have been designated, the applicant will be allowed 30 days within which to file a petition for its designation.

5. On the notice of allowance of an application, and on the application itself, you will stamp, "This additional entry is within 20 miles of the original," or that it is not, as the fact may be. To ascertain whether two tracts are within 20 miles of each other, the shortest distance in a straight line between the nearest points will be considered as controlling.

6. There must be shown in proof on the entry the usual residence and cultivation and the existence of a habitable house upon the land entered, exception to these rules being made only where said tract is within 20 miles of that embraced in the original entry and the entryman is residing on the latter. In that event the homesteader need not reside on the additional entry nor have a habitable house thereon, if he owns and resides upon the original tract when applying for said entry, and continues both ownership and residence until submission of proof.

In the proof, to be submitted within five years after the date of the additional entry, there must be shown residence on the additional tract—or on the original, if permitted under the 20-mile exception above explained—for not less than three years, subject to the privilege of being absent five months in each year, as provided by the three-year homestead act; also cultivation of not less than one-sixteenth of the additional tract during the second year after the date of the entry and of not less than one-eighth of its area during the third year and until submission of proof. Credit for military service will be allowed as in other cases.

7. As in other cases, a petition for designation, filed in connection with an entry under this act, must consist of an affidavit—executed in duplicate by the applicant and at least two witnesses—setting forth a description by legal subdivisions of all the land involved, its

character, and the conditions governing the irrigability of both tracts.

If any part or parts thereof are irrigated, their location, area, source of water supply, and other pertinent facts should be stated. If any part or parts thereof are under constructed or proposed irrigation ditches or canals, or adjacent thereto, the relation of the lands to same and the reasons for applicant's belief that the lands are not irrigable therefrom should be explained. The relation of the tract to surface streams or springs rising on or flowing across them or in their vicinity should be indicated. If such sources of water supply are inadequate for the irrigation of the applicant's lands, or are not available to him, full particulars should be given. The location and depth of wells, elevation of water plane relative to the surface, and other pertinent facts which will disclose the quantity and quality of the water supply, obtainable from either ordinary or artesian wells on the land, should be given. If there are no wells thereon such information should be furnished as to any other wells in that vicinity, and the possibility of irrigating the tract involved from underground sources should be fully discussed. If any attempts have been made to irrigate and reclaim the tract, or if it has been included in a desert-land entry, the reasons for lack of success should be stated. The petition should be supplemented by a map or diagram in cases where the facts may be advantageously presented thereby.

Where the Geological Survey advises this office that it is unable to classify the land, or some part thereof, as subject to designation, this office will, through the proper local land office, furnish the applicant with a copy of the Survey's report, and will allow him 30 days within which to file response. At the applicant's option he may either appeal from the findings to the Secretary of the Interior, alleging errors of law, or he may present further showing as to the facts, accompanied by such evidence as is desired, tending to disprove the adverse conclusion reached by the Survey. Such appeal or response, if filed, will be forwarded by you to this office, whence it will be transmitted to the Geological Survey for further consideration. That bureau will consider the evidence submitted and, if it warrants such action, will recommend designation of the land; or if its conclusion be still adverse, will transmit the record to the Secretary with report. The case will thereafter be considered as having the status of an appeal pending before the Secretary's office. In cases where the applicant fails to furnish a showing, or to appeal from the order of this office requiring him to furnish it within the 30 days limited, or where the Secretary refuses designation, final action will be taken and the case closed by this office on the basis of the designations which may have been theretofore made.

8. The act does not apply in any manner to the State of Idaho. Therefore entries can not be made thereunder in that State.

9. The provisions of this act do not apply to entries under section 6 of the enlarged homestead act.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

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